

BS"D

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INTERNET PARSHA SHEET ON MISHPATIM - 5762

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From: RABBI MORDECHAI KAMENETZKY rmk@torah.org Subject: Drasha - Parshas Mishpatim -- Sealed and Delivered

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

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

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

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

"Hey," he drawled, "your kosher stuff doesn't look too bad after all!"

Dovid smiled and was about to take his first bite into the sandwich when he realized that he had to wash his hands for the bread. He walked to the back of the plane to find a sink. It took a little while to wash his hands properly, but soon enough he returned to his seat. His sandwich was still on his tray, nestled in its ripped-open wrapping, unscathed.

And then it dawned upon him. There is a rabbinic ordinance that if unmarked or unsealed meat is left unattended in a gentile environment, it is prohibited to be eaten by a Jew. The Rabbis were worried that someone may have switched the kosher meat for non-kosher.

Dovid felt that in the enclosed atmosphere of an airplane cabin, nothing could have happened. After all, no one is selling meat five

miles above earth, and would have reason to switch the meat, but a halacha is halacha, the rule is a rule, and Dovid did not want to take the authority to overrule the age-old Halacha.

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

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

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

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

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

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

Good Shabbos

2002 Rabbi Mordechai Kamenetzky

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From: RABBI YISSOCHER FRAND ryfrand@torah.org To: ravfrand@torah.org Subject: Rabbi Frand on Parshas Mishpatim Civil Laws of Mishpatim Interrupt The Story of Receiving The Torah

At the end of Parshas Mishpatim, there is a narrative that recounts some of the details of Mattan Torah [the Giving of the Torah]. Indeed, although there is a difference of opinion among the early commentaries (Rishonim) regarding the timing of the narrative, Rashi's opinion is that the narrative occurred on the fourth of Sivan, just prior to Matan Torah.

According to Rashi, this section is not located in its proper sequence. It is a classic example of the principle that one cannot determine the chronology of an event from the place where it is recorded in the Torah (ayn mukdam u'me-uchar b'Torah). According to this opinion, the pasukim [verses] that are located at the end of Parshas Mishpatim, actually occurred previously -- all the way back in Parshas Yisro on the fourth of Sivan. All the events mentioned therein occurred as a prelude to Matan Torah.

In fact, the famous expression "We will do and (then) we will hear" [Shmos 24:7] is written here in Parshas Mishpatim. It is not to be found in Parshas Yisro in the midst of the Torah's main narrative of the Giving of the Torah.

The question is why? The Torah does not write chapters out of sequence in order to confuse us. There always must be a reason for the narrative to be written out of the actual sequence. We need to understand why the Torah interjected virtually all of Parshas Mishpatim, with its dozens of different laws, between the narration of Matan Torah in Parshas Yisro and the narration of the same event at the end of Parshas Mishpatim.

The answer is that this is teaching us two lessons, tying the giving of the Torah and Derech Eretz (proper civil behavior) together. It teaches that if there is no Derech Eretz there can be no Torah -- and that without Torah, there cannot truly be Derech Eretz.

Parshas Mishpatim lays the groundwork for the culmination of the story of Receiving the Torah. Parshas Mishpatim contains the laws of how to treat a Hebrew servant - which legislates how one must treat a thief who stole from you, and is so poor that he cannot pay you back. These laws govern how to treat a thief. Parshas Mishpatim teaches us how to carefully treat our animals. It is only after Parshas Mishpatim that we can move on to consummate the story of "Mattan Torah". If there is no "Derech Eretz", there is no Torah. All the fine analysis (Iomdus) and detailed logical argumentation (pilpul) of Torah study can not stand, if they are not preceded by civility and based on Derech Eretz.

The confusing split in the story of the Giving of the Torah is necessary in order to make a point: If we want to know how to properly accept the Torah, we must know how to correctly treat a widow, a worker or a thief. We must know how to be a 'mensch'. Therefore, the laws of Parshas Mishpatim must be well integrated into the story of the Receiving of the Torah, because without them, we have not properly received the Torah.

In addition, one needs a Revelation and a Receiving of the Torah to precede the laws in Parshas Mishpatim. Of course, there are Noachide Laws and the nations of the world do in fact have their own civil codes and civil laws with sophisticated judicial systems. But nothing, no system and no society, has ever provided for the protection and the rights and the feelings of an individual like the system of Torah.

The Alter from Kelm (1824-1898) comments on the pasuk [verse] in this week's portion, "Do not accept a false report" [Shmos 23:1]. The Talmud infers from this pasuk that there is a prohibition to accept or to speak Lashon Harah [gossip; tale bearing]. The Talmud [Pesachim 118a] comments on the juxtaposition of this verse with the preceding pasuk ("You shall not eat flesh of an animal that was torn in the field; throw it to the dog" [22:30]). The Talmud says that one who speaks or listens to Lashon Harah or bears false testimony against his friend is worthy of being thrown to the dogs. The Alter from Kelm asks, "Has there ever been a society on the face of the earth that has made such a 'big deal' about speaking Lashon Harah?"

I was once on an airplane, and there were two people from the same office sitting next to me. They were having a discussion about office politics. There were no holds barred. Neither of them prefaced any comments with "Excuse me, this is really Lashon Harah, but..." There were no pangs of guilt. This was open and blatant. They went on and on about this co-worker and that co-worker. Why? The reason is because they do not even have a concept of Lashon Harah. They had no concept that gossip is wrong, or evil.

"Who is like Your nation Israel, a unique nation amongst the (nations) of the earth?" [Samuel II 7:23] Do any other nations on the face of the earth have organizations and rallies and religious curricula for the express purpose of promoting the message not to gossip?

In the world at large there are "Pro-Abortion" rallies and "Anti-Abortion" rallies. That is a major issue. "Capital Punishment" vs. "No Capital Punishment" is another major issue. However, gatherings across an entire country for the purpose of promoting kinder and gentler speech? That is unheard of!

From where does this characteristic of the Jewish people stem? It stems from the fact that there was a Receiving of the Torah prior to Parshas Mishpatim (including all the basic civil laws). We know that we could not have invented all of these various legal principles on our own.

The Torah legislates that one is required to help load the donkey of his enemy before that of his friend! No society has ever made up a law that one must fix the flat tire of his sworn enemy before he fixes the flat tire of his life-long friend. That is Jewish law! "Who is like Your nation Israel, a unique nation amongst the (nations) of the earth?"

The narrative is written out of sequence -- Parshas Yisro before Parshas Mishpatim in order to teach us that had there not been Torah

(Parshas Yisro), there could have never been Derech Eretz (the civil law found in Parshas Mishpatim).

Without a Divine Being, we can not begin to erect a fair and kind society (if there is no Torah there is no Derech Eretz). And without Derech Eretz, without being a 'mensch', without knowing how to take care of one's ox, one cannot possess Torah. Derech Eretz precedes Torah, and stems from it as well.

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Baltimore, MD dhoffman@torah.org These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: Tape # 317, Wrecking A Borrowed Car. Tapes or a complete catalogue can be ordered from the Yad Yechiel Institute, PO Box 511, Owings Mills MD 21117-0511. Call (410) 358-0416 or e-mail tapes@yadyechiel.org or visit <http://www.yadyechiel.org/> for further information. RavFrand, Copyright 1 2002 by Rabbi Yissocher Frand and Torah.org.

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[http://www.jpost.com/Editions/2002/02/07/Columns/Shabbat Shalom: THE INJUSTICE OF INTEREST](http://www.jpost.com/Editions/2002/02/07/Columns/Shabbat%20Shalom%20-%20THE%20INJUSTICE%20OF%20INTEREST)
By RABBI SHLOMO RISKIN

(February 7) Parshat Mishpatim Exodus 21:1-24:18

"Now these are the statutes which you [the Israelites] shall place before them [the religious judges]." (Exodus 21:1)

"And not before gentile judges." (B.T.Gittin 88)

What is the case then in Israel, where even the judges of the secular courts are mostly Jewish? May observant Jews go to the secular courts for adjudication? The biblical commentator Rashi (1040-1105) cites the Talmudic interpretation in Gittin 88, and adds, "And even if you know that regarding a particular case, they [the gentile judges] would rule in an exactly similar way to the religious judges, you dare not bring a judgment before the secular courts. Israelites who appear before gentile judges desecrate the name of G-d and cause idols to be honored and praised" (Rashi, ad loc).

According to this passage, it would seem that the primary prohibition is to appear before gentile judges who are likely to dedicate their legal decision to a specific idol or god; it is the religion of the judge rather than the content of the judgment which is paramount. From this perspective, one might legitimately conclude that Israeli secular courts - where the judges are almost all Jewish - would not be prohibited, and so concludes Rav Professor Ya'akov Bozak (T'humim 2). Moreover, secular courts in America - where there is a clear separation between religion and state in the judiciary - may very well be permitted, since no idolatrous law would even be cited.

However, Maimonides would seem to support another opinion. Although he begins his ruling, "Anyone who brings a judgment before gentile judges and their judicial systems is a wicked individual" - emphasizing the religious or national status of the judge rather than the character of the judgment - he then concludes: "And it is as though he cursed and blasphemed (G-d), and lifted his hand against the laws of Moses" (Laws of the Sanhedrin 26, 7).

Apparently Maimonides takes umbrage at a religious Jew going outside the system of Torah law, thereby disparaging the unique assumptions and directions of the just and righteous laws of G-d.

In order for us to understand exactly what is unique about the Jewish legal system, permit me to give an example of the distinctive axioms of Torah law from another passage in this week's Torah portion, the prohibition against charging or accepting interest on a loan.

"If you will lend money to my nation, to the poor person with you, you may not be to him as a creditor, you may not place upon him an interest rate (nesheh); and if you accept from him your friend's cloak as security for the loan you must return the cloak to him before sunset. Because, after all, it may be his only cloak and [without it], with what [cover] will he lie down? And if he cries out to Me, I shall hear because I am gracious" (Exodus 22:24-26).

In addition to the touching poignancy of the latter portion of the passage, I would like to ask four questions. First of all, the prohibition against interest begins, "If you will lend money to my nation." Rashi cites the teaching of Rabbi Yishmael, that this is one of the three biblical instances where the usage of the Hebrew *im* is not to be understood as being volitional - if - but is rather to be taken as an imperative - "when you lend money to my nation" - as you should do. Nevertheless, one might legitimately ask why the Bible chooses to use such an ambiguous term for an act of lending which is clearly G-d's desire that we do.

Secondly, the Bible seems repetitious: "to my nation, to the poor person with you."

"You may not be to him as a creditor," says the Torah. This is interpreted by our Sages to mean that not only is it forbidden to me to remind him of his loan, but I may not cause him embarrassment by his meeting me; if I see him coming - and I think our encounter would shame him - it is incumbent upon me to change direction. Why?

Finally, the specific prohibition against interest itself (*nesheh*) seems problematic. *Nesheh* also means the bite of a snake, which our Sages compare to usury since the serpent initially injects his venom painlessly but it ultimately consumes the entire individual and takes his life. Maimonides goes so far as to codify: "Anyone who writes a contract with an interest charge is writing and causing witnesses to testify that he denies the Lord G-d of Israel and is denying the exodus from Egypt" (Laws of Lender and Borrowers, Chapter 4:7).

What is the logical reason for the prohibition against interest - and why the hyperbolic comparisons?

The Holy Ohr Hachaim (Rav Chaim Ibn Atar) beautifully explains: In an ideal world, he maintains, there ought to be no rich and no poor, no lenders and no borrowers; everyone should receive from the Almighty exactly what he requires to live. But, in His infinite wisdom, this is not the manner in which the Lord created the world. He provides certain individuals with excess funds, expecting them to help those who have insufficient funds, appointing them His "cashiers."

Hence you must read the verse, "If you have (excess) money to lend to my nation, (understand) that what ought to have gone to the poor individual is with you," as you were merely given the poor man's money in trust, your extra funds actually belong to him!

If you understand this fundamental axiom, then everything becomes clear. Of course, the lender may not act as a creditor - because he is only giving the poor man what is in actuality his. And of course one dare not charge interest: The money you lent out was never yours in the first place.

This is the message of the exodus from Egypt, the seminal historic event which formed and hopefully still informs us as a nation: no individual ought ever be owned by or even indebted to another individual; we are all owned by and must be indebted only to G-d.

This fundamental truth is the foundation of our traditional legal system, which is uniquely just and equitable.

Shabbat Shalom

<http://www.yu.edu/riets/torah/enayim/archives/issue21>

[From several years ago]

The Moral Lesson in Paying Less

PINCHAS WECHTER

In this week's *sedrah* we find the notion of *Arba'a V'chamisha* (21:37) -- if one steals and then slaughters or sells an ox or sheep, he must pay the animal's owner four or five times its original value. Among the questions raised regarding this concept is its placement in the *p'sukim*. One might have expected the Torah to first relate the basic laws against theft (i.e. the requirement of *kefel* f double payment, the liability of a thief who does not take the extra step of *sh'chita* or *m'chira*, or who steals something other than an ox or sheep) before mentioning *Arba'a V'chamisha*.

The Torah *Sh'leimah* cites the Rambam to answer this question. The Rambam in *Moreh Nevuchim* explains that the Torah describes *Arba'a V'chamisha* first because it is a situation common in thefts of animals. The perpetrator of the theft will attempt to ensure that the

animal's original owner will not be able to seek it out. Therefore, the thief will sell or slaughter the animal. Thus, the Torah's account accords with *derech ha'olam* - the way of the world.

A different answer lies in the *Gemara Baba Kamma* (62b), quoted by Rashi on *chumash*. The *Gemara* (62b) discusses the rationale behind paying only four times the original amount for a sheep, while for an ox restitution is five times the original amount. The *Gemara* records a dispute between R' Yochanan Ben Zakai and R' Meir. R' Yochanan is of the opinion that in truth the payment should have been five for both the sheep and ox. But, because the thief had to carry the sheep on his shoulder when he stole it and thus suffer a measure of disgrace, he is forced only to pay four times the amount of the sheep. The ox, on the other hand, caused no embarrassment to the thief. Therefore, the original fine remains. On the other hand, R' Meir is of the opinion that really both payments should be four times the original value. However, since the ox serves as an integral part of the original owner's work force, we penalize the thief more, thus compensating for the loss of productive labor.

Based on this *Gemara*, the Chasam Sofer answers our question regarding the placement of *Arba'a V'chamisha*. The laws of *Arba'a V'chamisha* are detailed in the Torah first in order to prevent instances of stealing. R' Yochanan teaches us that despite the thief's deplorable efforts to rid himself of the stolen property, we take care to compensate him for any embarrassment he may have suffered, and we charge him only four times the original value. If a thief's feelings are important to us, how much more so are those of our friends. How could we possibly think of stealing from them? By exhibiting consideration for the thief, the Torah hopes that we will learn to be considerate of others, thus solving the problem of theft before it even begins.

<http://www.tzemachdavid.org/thepracticaltorah/mishpatim.shtml>

THE PRACTICAL TORAH

BY RABBI MICHAEL TAUBES

Parshas *Mishpatim*: Going to Non-Jewish Courts

No definitive *Halacha LeMa'aseh* conclusions should be applied to practical situations based on any of these *Shiurim*.

The *Gemara* in *Gittin* (88b) derives from the opening *Posuk* of this *Parsha* (*Shemos* 21:1) that it is not permissible for Jews to go to gentile courts to settle their legal disputes, even in areas where the gentile laws are the same as Jewish laws. Rashi, commenting on that *Posuk* (*Ibid.* s.v. *Lifnaihem*), says that to do so constitutes nothing less than a *Chillul Hashem*, an idea echoed by the Rambam (*Hilchos Sanhedrin* 26:7) who uses similarly strong language in condemning a Jew who avails himself of gentile courts. The *Shulchan Aruch* (*Choshen Mishpat* 26:1) quotes the Rambam (*Ibid.*) and adds that this prohibition exists even if both parties agree to accept the decision of the gentile courts, known as "*Arkaos*." The *Ramo*, in a *Teshuvah* (*Sheilos V'Teshuvos HaRamo Siman 52*), forbids a Jew to even testify in a gentile court under certain conditions. Rather, Jews must go to a qualified *Beis Din* to resolve all of their legal matters.

What if one cannot collect what is due to him in a Jewish court because the other litigant refuses to appear before, or abide by the decision of that court, and the secular authorities in that land will not force him to do so? Does going to a gentile court remain forbidden? The *Rosh* in *Bava Kamma* (*Perek 8 Siman 17*) quotes one of the *Geonim* who says that in such a case, a Jew may bring a fellow Jew to a gentile court to collect his due. The Rambam (*ibid.*) and the *Shulchan Aruch* (*Ibid.* *Sif 2* and see *Ibid.* in *Ramo*) rule this way as well, stressing, however, that one must first attempt to resolve the problem in a *Beis Din* and then obtain the *Beis Din's* permission before going to a gentile court. In short, one may resort to a non-Jewish court only if refraining from doing so will result in the claimant being unable to collect that which is rightfully his.

The *Klei Chemdah*, in his first essay on this *Parsha*, raises an interesting question. If it is indeed a Torah based prohibition for a Jew to go to non-Jewish courts (in the category of a *Lav Ha'Bah B'Chlal Aseh*, a prohibition derived from a positively expressed requirement), why should one ever be allowed to do so? We know that in general,

one cannot violate any prohibition, even if one will otherwise incur a financial loss. One is in fact forbidden to violate a Lav, a prohibition from the Torah, even at the cost of losing all of one's possessions, as noted by the Ramo (Orach Chaim 656:1). Why then do the aforementioned Poskim allow one to violate this prohibition and go to a gentile court simply in order to avert the financial loss which would result from his being unable to collect what is due to him by law?

The Klei Chemdah (Ibid.) first suggests an approach based upon a Gemara in Bava Kamma (27b) which says that a person may sometimes take the law into his own hands and even resort to force in order to prevent a loss for himself. The Shulchan Aruch (Choshen Mishpat 4:1) rules that one may even hit and injure another person, which is normally forbidden (See Shulchan Aruch Ibid. 420:1), in order to protect one's interests. Logically then, the Klei Chemdah (Ibid.) suggests, one should also be allowed to violate the prohibition against using Arkaos in order to protect one's interests. Ultimately, however, he rejects this approach because of various technical factors which must be present in order to allow one to prevent a loss for himself by using force, but which are not necessarily present in every case where one wants to make use of the gentile courts. Indeed, the Ramo himself (Ibid. Siman 4 Sif 1) says that using non-Jews to help prevent a financial loss remains forbidden, or at least improper, as implied by the Terumas HaDeshen (Chelek 1 Siman 304).

The Klei Chemdah concludes (Ibid.) by saying that it is conceivable to suggest that going to Arkaos was forbidden only in cases where it would be possible to go to a Beis Din instead. The entire prohibition is only to avail one's self of a gentile court in place of a Jewish one. But when a Jewish court is unavailable, or unable to render, carry out, or enforce a decision, no prohibition to go to Arkaos exists to begin with. If one attempts, therefore, to settle a claim in a Beis Din and is, for whatever reason, unsuccessful in obtaining what is legally his, he may get permission to go to a gentile court because the whole prohibition against doing so was never intended to include such a situation. The problem with going to Arkaos apparently is that to do so is to give gentile courts credibility and preference over Jewish courts, and, as the S'ma (Choshen Mishpat Siman 26 Sif Katan 4) says, this implies that the laws of the Torah are not valid. If one first goes to a Beis Din, however, and subsequently obtains permission from them to go to Arkaos, this problem does not exist, and therefore there is no prohibition.

<http://www.koltorah.org/volume10/mishpatim2001.htm>
TABC Kol Torah [from last year]
1 Adar 5761 -- February 24, 2001
NAASEH VENISHMA REVISITED
BY RABBI DARREN BLACKSTEIN

Discipline, long-term dedication, and unswerving loyalty are precious commodities. As the years pass, it seems more difficult to find these qualities amongst mankind. Technological breakthroughs such as the information superhighway have stunned the world. We have gone from megahertz to gigahertz in a very short time. If you cannot point and click your way through something rather rapidly, the work becomes tedious. "Slow and steady" no longer wins the race in our modern society.

Along comes our Parsha and praises our people for what may be known as the ultimate statement of loyalty and dedication: Naaseh Venishma, "We will do, and we will listen." In 24:7, Bnai Yisrael respond to the giving of the Luchot at Har Sinai by saying that they will not make understanding a prerequisite for their performance of Mitzvot. They will perform the commandments even though they do not understand them at first. Such an attitude does not develop overnight. The period of slavery in Mitzrayim, the plagues, and the ensuing salvation cemented a relationship with Hashem; Bnai Yisrael all saw His Mighty Hand.

The Gemara in Shabbat (88a) tells us the following in the name of Rabbi Elazar: "At the time that Israel preceded 'we will do' to 'we will listen,' a Heavenly voice went out and said to them, 'Who revealed to My children this secret that the ministering angels use?'" This rhetorical

question seems to be a compliment: Bnai Yisrael acted as the angels do. We somehow discovered their level and secret of obedience.

Rav Baruch Epstein, in his Torah Temimah, explains that only mankind has the need for understanding before acceptance. However, the nature of the ministering angels is not so. They are totally spiritual and are not subject to time; therefore, their understanding and acceptance come simultaneously. Who gave Bnai Yisrael the strength to feel something that had been reserved for the ministering angels? Rav Epstein crystallizes the level that our people reached at that time. The relationship seems to be one of Dveikut - clinging to the Almighty.

The attainment of this level comes with great responsibility on our part. All too often we expect our youth to follow in our religious footsteps. We put on Tefillin, Daven, sing, and study Torah with great enthusiasm and expect the same from our children. Students are instructed to Daven, and children are expected to accompany parents to Shul on Shabbat. This is the protocol; this is who we are. We are comfortable with our obedience and cannot imagine anything but that for our children. Does anyone ask why a rook cannot move diagonally? We find out what to do and then we play. Should we treat religion the same way? Naaseh Venishma tells us the opposite! Surely, at the incipient stages of development a child cannot understand Davening or Mitzvot very deeply. We all start out, in some way, with obedience because understanding comes with time. After the early, formative years, the child starts to wonder what is behind these acts and rituals that are performed. If left in the dark, the child's performance becomes habitual and empty, void of any growth towards Hashem.

Our Parsha is telling us that the kind of obedience that Bnai Yisrael had was an acquired one. How can we expect our youth to appreciate Davening if they do not have the foggiest idea as to what the Tefilot mean? Indeed, all actions cannot be predicated on total understanding or nothing would ever be accomplished. However, we must constantly nurture the hearts and minds of our youth through teachers, friends, and family. The road to Naaseh Venishma is paved with the rare commodities of discipline and dedication. May we all merit to be vehicles for future generations in this pursuit.

From: torahweb@zeus.host4u.net
http://www.torahweb.org/torah/2002/parsha/rhab_mishpatim.html
RABBI YAAKOV HABER

THE PLEASURE OF TORAH

"Vayechezu es ha'elokim vayoch'lu vayishtu" -- "And they [the great men of Israel] saw [the presence] of G-d, and they ate and drank" (Mishpatim 24:11). Midrashim and commentaries interpret these verses in diametrically opposite ways. Rashi, quoting from Midrash Tanchuma, explains that they viewed the Shechina in an inappropriate, haughty manner. However, many others (see Ramban, Sforno, Rashbam, and Targum Onkelos) explain that after witnessing the Divine Presence (or after their sacrifices were accepted), they rejoiced with food and drink (or as if they partook of food and drink).

The component of joy that accompanies an encounter with the Shechina appears frequently throughout the Torah as a central element in 'avodat Hashem. Rav Yosef Dov Halevi Soloveitchik, zt"l, explained that the very definition of true simcha is "lifnei Hashem" -- when one is in the presence of the Shechina. Hence, the Torah on numerous occasions, states "u'smachtem lifnei Hashem" -- "and you shall rejoice in the presence of G-d."

The component of simcha, although important in the performance of all mitzvos (e.g. see Rabbeinu B'chaye in his introduction to Parshas B'ha'alos'cha), is especially significant concerning the mitzva of talmud Torah. Ramban, in his Seifer HaMitzvot (Mitzvas 'Asei 3), describes how one can fulfill the commandment to love G-d. "shenachshov v'nisbonein b'mitzvosav ... ad shenasigaihu v'nehene b'hasagaso b'tachlis ha'hana'ah" --- "that we should think and analyze his mitzvos (a reference to talmud torah) ... until we understand it and enjoy its attainment with an extreme degree of pleasure." Here, as opposed to other mitzvos, we find the component of pleasure and joy in the very description of the mitzva itself. The words of R. Avraham of Sochatchov in his introduction to Eglei Tal are well known. One should

not think that the joy experienced through talmud Torah demotes the mitzva to a state of shelo lishma, not for the sake of heaven. The opposite is true. The purpose of the mitzva is to experience joy.

An even more striking statement appears in the commentary of R. Avraham min Hahar to Maseches N'darim (36b). The Mishna there states that a mudar hana'a mei'chaveiro -- one who is proscribed from receiving benefit from his fellow by dint of a neder -- may not use his sifrei kodesh. Now, mitzvos lav leihanos nit'nu -- generally, we don't view the pleasure received through mitzva performance as benefit vis-a-vis the prohibition of n'darim. Why, then, can he not use his s'farim? Whereas other Rishonim offer different answers, R. Avraham min Hahar resolves the difficulty with the above principle. Unlike other mitzvot, the mitzva of talmud Torah was given precisely so that the student of Torah should be "mishtashei'a bid'var Hashem" -- delight in the word of G-d. He proceeds to quote T'hilim (19). "Pikudei Hashem y'sharim, m'sam'chei leiv" -- "the commandments of Hashem are upright, they gladden the heart!"

The author of Mesillas Y'sharim opens his classic mussar work with the statement that man was created "l'his'aneig 'al Hashem" -- to enjoy Divine pleasure in 'Olam HaBa. Midrash Tanchuma (Ki Savo 4) notes that the Torah really should have not been given in 'Olam HaZeh since Hashem will teach Torah to all in 'Olam HaBa. However, it was given to B'nei Yisrael in this world so that we should understand the Torah in 'Olam HaBa. Now, the World to Come is the world of "nehenin miziv ha'shechina" (Brachos 17b) -- enjoying the Divine radiance (which interestingly is derived from the above-quoted verse in our parasha). The direct implication is that limud haTorah is equivalent to "nehenin miziv ha'shechina." This Midrash, too, highlights for us the great pleasure and joy inherent in Torah study. It is no less than a slice of 'Olam HaBa right here in this world.

The centrality of pleasure and joy relating to talmud Torah and Hakbalas P'nei HaShechina in the Mikdash would appear to be related for talmud Torah is also an encounter with the Shechina (see, for example, Nefesh Hachayim 4:6). In the temporary absence of a Beis HaMikdash where the Shechina dwelt, only the Torah can serve as the vehicle for the encounter with the Divine. Thus, it is not surprising that joy is so crucial regarding both of these commandments.

From: Rabbi Ben Kelsen benish@att.net To: parshas_hashavuah@yahoo.com Subject: [parshas_hashavuah]

HaGaon HARAV SHLOMO ELIMELECH DRILLMAN, zt"l Rosh Yeshiva, Yeshivas Rabbeinu Yitzchok Elchonon Parshas Mishpotim

Editor's Note: This shiur was given by HaRav Drillman, zt"l, in February of 1992. All translations are based on the Metzuda Chumash. BGK

Shemos, Perek 23: 20-24: Behold, I will send an angel before you, to guard you on the way, and to bring you to the place that I have prepared. Be careful in his presence and heed [obey] his voice. Do not rebel against him; for he cannot bear [pardon] your transgression, as My Name is in him. But if you truly listen to [obey] his voice, and do all that I speak, then I will be an enemy to your enemies, and attack those who attack you. My messenger will go before you, and will bring you into [the land of] the Emorites, the Chittites, the Perizzites, the Canaanites, Chivites, and the Yevusites, and I will then annihilate them. You must not prostrate yourself to their gods, nor serve [sacrifice to] them. You must not adopt their customs. You must totally destroy [their idols] and completely break down their monuments.

Rashi: As My Name is in him. This follows the beginning of the verse: "Be careful in his presence... for My Name is linked with him." Our Sages (Sanhedrin 38b) said that this angel is Metatron whose name is the same as his Master's...

In the passukim quoted above we find HKB"H telling Moshe Rabbeinu that He will send a Malach to accompany Bnei Yisroel. HKB"H further warns Moshe that because "Ki Shemi b'Kirbo" Bnei Yisroel should be careful not commit any sins. A few parshios later in

Parshas Ki Sisa following the Cheit HaEigel, the sin of the golden calf, the Ribbono Shel Olam tells Moshe that He will send a malach to lead Klal Yisroel through the wilderness. Interestingly, this second time Moshe Rabbeinu asks HKB"H that instead of sending a malach He should lead Bnei Yisroel into Eretz Yisroel himself.

In Parshas Mishpotim, Rashi says that HKB"H told Moshe that Bnei Yisroel will eventually sin and that this transgression will cause HKB"H to send a Malach to lead Klal Yisroel instead of the Ribbono Shel Olam Himself. The obvious question is why did Moshe not object to the sending of a proxy in Parshas Mishpotim but did do so in Ki Sisa?

The Ramban explains that the word Malach has two meanings. The first meaning of the word is an angel or another messenger of HKB"H. The second meaning is a reference to the Ribbono Shel Olam Himself. An example of this can be seen in the brochah that Yaakov Avinu gave to his grandsons Efraim and Menashe wherein he said "HaMalach HaGoel... Yevarech Es Hanearim."

According to the Vilna Gaon, one may not pray to a malach. The Rambam in the Peirush HaMishnayos on Maseches Sanhedrin states that one may not ask a Malach to act as an intermediary between Man and HKB"H by bringing a person's tefillos before the Melech Malchei HaMelochim.

HaRav Drillman, zt"l, pointed out that according to these opinions it would be inappropriate to say the Machnisei Rachamim section at the end of Selichos as it is requesting the interceding on our behalf of a Malach. One of the most important principles in Yehadus is that Man speaks directly to HKB"H and not through an intermediary. This was one of the problems that the GR"A had with chassidus. If this is so, then how could Yaakov Avinu ask that a Malach bless his grandchildren?

The Ramban explains that in the case of HaMalach HaGoel Yaakov Avinu was referring to the Ribbono Shel Olam Himself. Yaakov refers to HKB"H in this manner because it was in this way that He appeared to Yaakov.

The Ramban points out several examples of this use of the word "malach". Another example of this idea can be seen in the conversation that transpires between Yaakov and the Malach where Yaakov is told that the time has come for him to return to Eretz Yisroel. It is quite apparent when reading these verses that the use of the word malach here refers to HKB"H. The Ramban points out that we see that when Avraham Avinu was mispallel that his servant Eliezer should be successful journey in his journey to find a mate for Yitzchok, Avraham prayed that HKB"H send His malach as a guide for Eliezer.

In Bereishis 24:7: it says "Hashem, G-d of heaven, Who took me from my father's house, and from the land of my birth, Who spoke to me, and Who swore to me, saying, 'To your descendants I will give this land'--- He will send His malach before you, and you shall take a wife for my son from there." Clearly this reference to "malach" in the above cited passuk refers to HKB"H himself. Similarly, when the Ribbono Shel Olam appeared to Moshe at Har Sinai through the burning bush, the Torah refers to Hashem as Malach as it is written: "A Malach appeared to him [Moshe] in the heart of a fire in the midst of a thorn-bush. He looked and behold the bush was on fire, but the bush was not being consumed."

We can also find other sources that describe HKB"H appearing in different forms depending on the given situation. According to the Medresh, HKB"H appeared in the form of a mighty warrior prior to Krias Yam Suf. However, He appeared to Moshe Rabbeinu in the form of an kind teacher, a "Rebbe", of children at Har Sinai during Matan Torah. Furthermore, in the Shir HaKavod we find that people view the Ribbono Shel Olam in different ways, and yet, or perhaps because, he can not be grasped nor comprehended by our limited minds.

Our parsha is no different. In Parshas Mishpotim we read of HKB"H Himself leading Bnei Yisroel through the wilderness in the form of a "Malach".

This explanation can be confirmed through the directions given to Moshe. HKB"H tells Moshe that Bnei Yisroel must heed the Malach because "Shemi b'kirbo", "My Name is within him". Just as Yaakov said that HKB"H appeared to him as HaMalach HaGoel, the Malach in

Parshas Mishpotim refers to the Ribbon Shel Olam Himself, as well. Prior to the Cheit HaEigel, HKB"H intended to accompany Bnei Yisroel to Eretz Yisroel Himself. Obviously there was no reason for Moshe to protest. However, in Parshas Ki Sisa after the cheit haEigel, Moshe is informed by HKB"H that now a "real Malach" a messenger of HKB"H, not He Himself, will lead Klal Yisroel to Eretz Yisroel. Moshe feels it appropriate to object and asks HKB"H to reconsider, so that the Giluy Shechina that distinguishes Klal Yisroel from the other nations of the world will not be lost.

According to The Rav, zt"l, in Parshas Mishpatim and Parshas Ki Sisa the Torah is referring to a "real Malach", what we would call an angel. It is important to note that a "Malach" implies the use of the Midas HaDin, strict adherence to justice and punishment. It is for this reason that Rashi, on the words "ki Shemi b'kirbo", quotes the Gemara that states that "Shemi", "My Name", refers to the name "Metatron". This name is symbolic of the Midas HaDin while the Midas HaChesed and Midas HaRachamim, however, are not associated with this specific name of Hashem. It is interesting to note that we never see the concept of a malach associated with the Midas HaRachamim. A Malach can only represent HKB"H in the application of the Midas HaDin, implementation of the Midas HaRachamim can be applied only to the Ribbono Shel Olam Himself.

In Parshas Mishpotim, Moshe Rabbeinu felt that Bnei Yisroel had reached the highest levels of kedushah attainable by Man. As such, it was inconceivable to him that Bnei Yisroel might commit a sin, especially one of the magnitude of the cheit haEigel. Moshe Rabbeinu did not protest HKB"H leading Klal Yisroel Himself because he thought that Bnei Yisroel could easily withstand the strict application of the Midas HaDin through a Malach. Following the cheit haEigel, however, when Moshe Rabbeinu realized that fact that Bnei Yisroel were indeed fallible and therefore capable of sin he objects to the use of a "malach" because he realizes that Bnei Yisroel will not survive if they will be judged without Chesed or Rachamim. Therefore, Moshe raises his objection to the Dayan HaEmes and HKB"H agrees to accompany Klal Yisroel Himself. It is at this time that He teaches Moshe Rabbeinu of the 13 Midos, the Attributes of Teshuvah. The Midos HaRachamim are, in actuality, attributes of mercy granted by HKB"H and can be accepted only by Him, not by a "Malach". This is the meaning of the disparity in Moshe Rabbeinu's protesting to HKB"H in Ki Sisa but not in Parshas Mishpotim.

From: Jeffrey Gross jgross@torah.org neustadt@torah.org Subject: Weekly Halacha - Parshas Mishpatim By RABBI DONIEL NEUSTADT Rav of Young Israel of Cleveland Heights A discussion of Halachic topics. For final rulings, consult your Rav.

PROBLEMATIC SITUATIONS OF ZIMUN

QUESTION: In order for the obligation of zimun to be in force, how many people have to be eating?

DISCUSSION: Three men who ate a meal together are Rabbinically(1) required to recite Birkas ha-Mazon together(2). One of them recites the zimun and the first blessing of Birkas ha-Mazon aloud, so that the others can hear him clearly. For this reason, when there is a big crowd, a man with a powerful voice should be chosen for the honor(3).

If two people sit down to a meal which includes bread, and a third person wants to join them, they should ask him to eat bread along with them so that they can recite zimun. If he refuses to eat bread, then even if he eats a k'zayis' worth of any food (approx. 1 fl. oz.), zimun is recited(4).

If the third person drank wine or any natural fruit juice, zimun may definitely be said(5). Many poskim rule that coffee or tea is also sufficient to require zimun(6). Some poskim allow even soda or lemonade(7), while others do not(8). If the third person drank water only, no zimun is said(9).

A minimum of seven people can get together for a meal including bread, and join with three other men who did not eat bread in order to recite the name of Hashem [Elokeinu] when reciting zimun, provided that the three men ate or drank something, as stated above(10).

QUESTION: What are the rules of zimun when five men eat together? DISCUSSION: Five men who eat together must recite Birkas ha-Mazon together. They may not separate before the zimun is recited(11).

If one or two need to leave early, they should ask the other three to join them in the zimun. If only one of the other three joins them, the remaining two may not join with the one who joined previously, even if they all eat again together(12). If, however, there were six(13) or more men eating together and two of them finished early, the one who joins them for zimun may join the next two when they are finished(14).

QUESTION: May two groups of five people, sitting in a yeshiva dining room at two separate tables, join together for a zimun of ten and recite Elokeinu? DISCUSSION: Zimun can only be said in one of the following two cases(15): a) by those who sat together at one table, even though each is eating his own meal; b) by members of one household, even though they are seated at separate tables. Therefore:

If the two groups consider themselves as members of one household ??in other words, they would have liked to sit together but could not do so because there was no room for all of them at one table ??then they may join together for a zimun of ten(16). The tables should be in close proximity to each other(17).

If, however [as is frequently the case], the groups are split according to classes or cliques, and each group wants to sit separately, then they may not join together for a zimun of ten, unless the two groups had the specific intention at the start of the meal to join together(18).

FOTNOTES: 1 Sha'ar ha-Tziyun 197:16; 199:19, according to most Rishonim. See, however, Chazon Ish O.C. 31:1, who maintains that zimun is min ha-Torah. 2 O.C. 192:1. 3 Mishnah Berurah 193:17. A microphone should not be used. 4 O.C. 197:3 and Mishnah Berurah 22. 5 O.C. 197:2 and Mishnah Berurah 20. L'chatchilah, a revi'is (3.3 fl. oz.) should be drunk. B'dieved 1.7 fl. oz. is sufficient; Beur Halachah, ibid. 6 Teshuvos v'Hanhagos 1:183; Vezos ha-Berachah, pg. 130. 7 Aruch ha-Shulchan 197:5. 8 Harav Y.Y. Fisher (quoted in Vezos ha-Berachah, ibid.). 9 Ruling of the Mishnah Berurah 197:12. Shulchan Aruch Harav and Chayei Adam rule that zimun may be said over water. 10 O.C. 197:2. 11 O.C. 193:1. 12 Mishnah Berurah 200:9. Aruch ha-Shulchan 200:5 and Chazon Ish 31:5, however, hold that if they eat together again they can recite zimun. 13 Mishnah Berurah, quoting the Magen Avraham, says: seven or eight men, but Levushei Serad and Shoneh Halachos say six or more. 14 Mishnah Berurah 200:9. 15 Mishnah Berurah 193:18. 16 Harav S.Y. Elyashiv (quoted in Vezos ha-Berachah pg. 133). This is the reason why guests at a wedding may join together for a zimun even when there are not ten people at their table. See also Sova Semachos, pg. 111. 17 Beur Halachah 167:11. 18 Harav S.Z. Auerbach and Harav C.P. Scheinberg (Vezos ha-Berachah, ibid.). There are other poskim who hold that yeshiva students can join together at any time, see Minchas Yitzchak 8:8 and Beis Baruch 48:24. Harav Elyashiv recommends that to avoid any questions and doubts, it is best that the groups clearly intend not to join together, as the Igros Moshe O.C. 1:56 suggests to a guest who cannot stay late at a wedding. Weekly-Halacha, Copyright 1 2002 by Rabbi Neustadt, Dr. Jeffrey Gross and Torah.org. The author, Rabbi Neustadt, is the principal of Yavne Teachers' College in Cleveland, Ohio. He is also the Magid Shiur of a daily Mishna Berurah class at Congregation Shomre Shabbos. The Weekly-Halacha Series is distributed L'zchus Doniel Meir ben Hinda. Weekly sponsorships are available - please mail to jgross@torah.org . <http://www.torah.org/>

From: dafyomi@hadaf-hayomi.com

Bava Metzia 75b THERE IS VERBAL INTEREST.

Thanking those who lend funds for publication

A few generations ago, a leading Torah scholar published a book of chidushim that was sharply criticized by HaGaon Rav Shlomo Yehuda Siget zt"l, not for its contents but because of one page at its end. The page featured the author's warm thanks to those who lent him funds

for publication and the Sigeter Gaon, author of Erech Shay (Y.D., last ed., 160:12) remarks that the scholar had surely erred: According to our sugya, if someone does not usually greet a certain person, he must not do so once getting a loan from him as any such expression is defined as verbal interest (ribis devarim). An author, therefore, must not bless a lender in his book for aiding him to publish it as the gesture is surely an unusual greeting.

The source of the prohibition against verbal interest: Still, an examination of the details of the prohibition reveals that some opinions allow us to thank lenders in a certain way. First of all, poskim disagree

as to whether ribis devarim is forbidden by the Torah or only by rabbinical injunction (derabanan). Secondly, an author's thanks to a lender may be expressed in two ways: (a) A lender may not have asked to be thanked whereas the author thanks him on his own; (b) A lender supports publication only if the author thanks him in the book. If ribis devarim is derabanan, an author may thank his lender if the lender made this a condition for the loan as Chazal did not apply ribis derabanan if a loan is made for a mitzvah (see Remo, Y.D. 172:1). If, though, ribis devarim is forbidden by the Torah (d'oraisa), the lender's condition is defined as interest specified in advance (ribis ketzutzah), prohibited in any case. Most poskim hold that ribis devarim is derabanan (see Toras HaRibis, 4:1; Divrei Soferim, 160:1; Shi'urei HaGaon Rav Y.S.Elyashiv, Kiddushin 8a; Yabia' Omer, IV, Y.D. 9).

"The donor should be blessed": To avoid the aforesaid difficulties, HaGaon Rabbi Moshe Feinstein zt"l suggests that authors wanting to acknowledge lenders who aid publication should bless them as follows: "Reuven shall be blessed from Above for having lent funds for publishing this work". Such a blessing is not ribis devarim as the borrower is not blessing the lender but just informing us that Reuven will surely be blessed from Above for enabling the performance of a mitzvah (Responso Igros Moshe, Y.D., I, 80). Expressing thanks when given a loan: According to Shulchan 'Aruch HaRav (Dinei Ribis, 69), "Even saying a compliment for a loan is forbidden "or to thank him". HaGaon Rabbi Shlomo Zalman Auerbach zt"l therefore ruled (in a letter cited in Dinei Ribis Kuntres Acharon, 2:11 by HaGaon Rabbi M. Sternbuch) that a borrower must not even thank his benefactor for a loan. HaGaon Rabbi Y. Bloy, mentions in his Beris Yehudah (11:4) that people usually say "May you merit to observe mitzvos" (Tizku lemitzvos). Some have doubts about the custom (see Minchas Shlomo, 27) but those defending it claim it is not a blessing but a statement to the borrower: "Just as you had the merit to do this mitzvah, may you perform others, as Chazal said: 'One mitzvah leads to another' (Avos 4:2)".

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