

HEMDAT YAMIM

PARASHAT BEHAR

12 Iyar 5768

This week.....

This edition of Hemdat Yamim is dedicated in loving memory of
R' Meir ben Yechezkel Shraga Brachfeld

o.b.m

Hemdat Yamim is endowed by Les & Ethel Sutker of Chicago, Illinois in loving memory of

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The Parasha of Social Justice ... and Anything Else?

Our short *parasha* is packed with issues of social justice. These include the social equality elements of *shemittah* (Sabbatical year) and *yovel* (jubilee) and limitations and regulation on slavery from abuse (when society was not ready to function without slavery). These conceptually related laws are contained in one long "chapter" (Vayikra #25), which more or less makes up the entire *parasha*. Two final *p'sukim*, which mention the ritual prohibitions of idolatry (with one new point), Shabbat observance, and respect of sacred places, begin Chapter 26, which deals with the positive and negative consequences of fulfilling Hashem's commandments or failing, respectively. However, the Torah, by its spacing of paragraphs, and *Chazal*, in setting up the Torah portions, contradict the gentile division of the text into the chapters we commonly use. What is at the heart of this subtle but significant dispute as to the connection between sections?

The final laws of the "social section" regulate non-Jews' ownership of Jewish slaves. A non-Jew can "own" a Jew even in the Land of Israel, even under Jewish dominion (see Rashi to Vayikra 25:48). However, the Torah mandates certain limitations. Just as a Jew must set his Jewish slave free in *yovel* (Vayikra 25:10), so must the non-Jewish slave-owner (ibid.:54). Just as a Jew may not abuse the slave (ibid.:42) so mustn't a non-Jew (ibid.:53). In both cases, the slave has the right to be redeemed at a fair price (ibid.:48; Kiddushin 14b). In each case, the Torah explains the rationale behind not allowing permanent slave ownership: "For they are My slaves, whom I took out of Egypt" (ibid.: 42, 55).

After discussing the need for the Jewish slave to remain Hashem's servant and mandating his eventual freedom, the Torah forbids idolatry and work on Shabbat. Rashi explains that the Torah reminds the slave not to copy his more socially successful master in these areas. The Seforno explains similarly that while the Jewish slave must be obedient to his non-Jewish master, he may not follow instructions that involve sinning, whether it is idolatry, Shabbat, or another sin.

Looking back at ancient and recent history, we should recall that even when formal slavery did not exist, social pressure required Jews to temper the dependence on the non-Jews around them with the mandate to remain loyal first and foremost to Hashem. So whether pogroms or Emancipation made it seem more glamorous or profitable to adopt non-Jewish practices, *Parashat Behar*, which extends into what gentiles call Leviticus 26, tells us that we must not give in. Non-Jewish employers (or Jews who forgot Jewish values) would say to Jewish workers (/slaves): "If you don't come to work on Saturday, don't come on Monday." The brave among our grandparents dared to follow the instructions of Behar's last *p'sukim*, remaining loyal servants of Hashem despite temptation and pressure.

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Ask the Rabbi

Question: Please give some applies? rebuke) gnivig) tochacha of mitzva the when on guidelines If one is not sure if the recipient will respond positively or negatively, should he say something?

Answer: It is not possible in this context to give more than “some guidelines” in this complex matter. I also will modify the question slightly. Classic *tochacha* is done to change the mind of one who sinned knowingly. Although the *mitzva* exists nowadays, most authorities assume that it can be accomplished satisfactorily only by those who people who are uniquely qualified or those with special relationships (e.g., spouses, parent-child, teacher-student) (see Amud Hay’mini, *siman* 10). So let us concentrate on the related *mitzva* of *afrushei mei’issura* (keeping a counterpart from sinning) by informing someone that he is sinning unintentionally. The S’dei Chemed (vol. VII, pg. 318) demonstrates that *afrushei mei’issura* is actually derived from the *pasuk* of *tochacha*.

The first guideline is that when one is sinning unknowingly but will sin knowingly if he is told, he should not be informed (*mutav sheyihyu shog’gin v’al yihyu m’zidin*- see Beitza 30a). This however, applies only when one is sure that the party will not change his ways (Tosafot, Shabbat 55a; Mishna Berura 608:3). It does not appear that one needs 100% surety, and it is very difficult to apply this distinction. One of the cases where pointing out a mistake is less likely to be successful is when many people act improperly in a certain matter (see Beitza 30a; the Rama (Orach Chayim 608:2) makes this distinction in our general context.)

The possibility of a negative backlash is also a factor. In a landmark *teshuva* (Minchat Shlomo 35), Rav S.Z. Orbach argues that one may even create a situation whereby his counterpart will sin (ostensibly violating *lifnei iver*, placing a spiritual stumbling block), if failure to do so would cause that person to deteriorate further, such as in hatred of Torah and its adherents. Certainly then, one can refrain from butting in when information is likely to cause significantly negative results in addition to probably not helping. We use some variation of this concept often in our interactions with the non-observant and those with inconsistent observance. Honestly, it is not always clear when our silence is due to prudence and when we tend to avoid uncomfortable conversations.

It is important to consider that it is not always a choice of whether someone’s mistake should be corrected but when, how, and by whom it should be done. Consider the following application (found in Rashi to Devarim 1:3). Yaakov, Moshe, Yehoshua, and Shmuel all waited until close to their deaths to strongly rebuke their constituencies out of fear that earlier rebuke might have caused the recipients to have change their allegiances in favor of a path of evil. Similarly, a new rabbi may see many things that he knows his community needs to change. Instead of raising all issues at once and failing, he waits for a (hopefully) opportune time to deal with each (or some) of them.

An interesting question is whether one should say something when he sees an unaware person doing something that is forbidden according to a consensus of opinions, but where there is not unanimity. Again, we will borrow a concept from Rav Orbach’s approach to *lifnei iver*. Most *poskim* posit that one who is stringent on a certain question may enable one who is legitimately lenient on the matter to partake in the practice (see Ktav Sofer, YD 77). The giver does not have to apply his own standards regarding a possible violation performed by someone else. Rav Orbach (Minchat Shlomo 44) goes further, saying that even if Reuven, who is doing the questionable thing, is unaware of the majority who forbid the matter and the legitimate minority, Shimon may enable Reuven to act so if he knows that if Reuven were aware of the opinions, he would act leniently.

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Have a question?..... e-mail us at info@eretzhemdah.org

Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

The Torah and the Land – part II (from Harabbanut V'Hamedinah, pp. 310-312)

[Last time we saw about the positive steps that Yehoshua took to impress upon Bnei Yisrael that although they were entering a life of natural, physical existence, they must remember that Hashem's Hand is responsible for their successes. Now we will deal with some shortcomings.]

Yehoshua failed in the matter he was commanded from the outset: "The book of the Torah shall not move from your mouth, and you shall dwell in it day and night" (Yehoshua 1:8). While busy with the operative elements of the conquest, he ignored the irreplaceable, basic condition- Torah study. The prophet tells us that Hashem's "military commander" appeared because of the matter of "now," meaning, to chastise him for not learning during the preparations (Megilla 3a). The great importance of conquering the Land depends on the depth of Torah study day and night. If Yehoshua was busy in the day, he could have dedicated the night to Torah. "Great is study, which leads to action." Without it, action will not fully succeed. Torah study puts one in an other-worldly spiritual state that turns physical matters into trivialities that are important only as means. Without Torah study, physical things entice one and do not enable him to win the battle with the evil inclination (see Sukka 52b).

Yehoshua's failure to place Torah study at the center of life from the outset of conquest apparently caused future failures. At the end, the nation was guilty of idol worship, incest and idolatry, and murder, which in turn caused the destruction of the *Beit Hamikdash* and foreign domination over Israel.

"Moshe received the Torah at Sinai and handed it to Yehoshua, and Yehoshua to the elders, and the elders to the prophets and the prophets...." The chain did not go from elders to elders but to prophets, who are an important but different type of link. Everyone can have a share in the crown of Torah, but not everyone is capable of prophecy. When the Torah is the domain of prophets, others are excluded. This is hinted at in the *pasuk's* summary of the era: "The nation served Hashem all of Yehoshua's days and the days of the elders who continued after Yehoshua" (Shoftim 2:7). When the link of elders ended, the nation deteriorated spiritually.

This initial failure may be referred to by *Chaza'l's* comments on the cause of exile, "for leaving my Torah'- that they did not bless on the Torah in the beginning" (Bava Metzia 85b). The beginning can refer both to when they first entered the Land and in regard to making Torah study a priority as the center of their new life in the Land. This is the difference between Moshe and Yehoshua. Moshe saw people as seeking him out in order to "seek Hashem" (Shemot 18:15). Yitro viewed them as burdening Moshe with dispute resolution, but Moshe explained that in fact the people were coming to learn, with disputes serving as the framework for learning Hashem's laws. Divine wisdom cannot be absorbed abstractly and so justice becomes a means of grasping it. People had a desire to be involved in Torah study, as this is the very basis of life. This idea was the essence of Moshe's personality and something that he toiled to engrain in the people. For this reason, the Torah is called the "Torah of my servant Moshe" and Torah scholars are referred to as Moshe (see Rashi to Chulin 93a).

That is why the *midrash* says that if Moshe had entered the Land, destruction would not have occurred. He would have succeeded in endearing Torah study on all avenues of the nation's life. This would have protected them from being pulled along with physicality as a goal in its own right, instead of a means for the service of Hashem. Then, instead of being influenced by the abominations of other nations, the Torah would have gone forth from Zion and the nations would have abandoned their idols. This is the aspiration that we also are yet to actualize in our times, yet our eyes look forward to it in the end of days.

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P'ninat Mishpat

Firing of a Teacher for Coming Late

(based on Halacha Psuka, vol. 43 - a condensation of Piskei Din Rabbaniim, vol. XVIII, pp. 94-102)

Case: The plaintiff (=p) was a *ram* in the defendant's (=def) yeshiva for four and a half years and was fired in the middle of the winter term. *Pl* demands severance pay and payment until the end of the year. *Def* justifies the firing based on the undisputed fact that *pl* came late several times and that he once hit a student.

Ruling: *Beit din* recognizes severance payment as accepted practice, which does not require an explicit promise in a given work situation. Furthermore, the practice is that a worker does not lose the right to severance pay even if he was dismissed for valid reasons unless he was convicted of a crime.

The *dayanim* disagreed whether there were valid grounds for *p*'s dismissal. Regarding the incident where *pl* hit a student, it was agreed that this was not grounds for dismissal. Although it is no longer considered valid for a teacher to hit a student, it is not accepted, even among schools that are run under the Department of Education, to fire a teacher based on a single incident. Regarding arriving late to work, one *dayan* felt that it was not grounds for dismissal. He cited a ruling of Rav Moshe Feinstein (Igrot Moshe, YD I, 138) who says that while it is forbidden to arrive late for work, it is not grounds for firing.

However, another *dayan* pointed out that since *pl* admitted that the reason he frequently came late is that he felt that since he was underpaid, he did not have to put so much effort into his job, it is clear that he did not consider teaching Torah such an important undertaking. It appears that the students sensed this lack of dedication. Therefore, the dismissal was justified (*pl* would still get severance pay).

The practice is to pay teachers until the end of an academic year even if the employer wants to discontinue the employment, because it is difficult to find work in the middle of a school session. There seem to be two additional reasons. First, the Rosh (Shut 104:4) says that one who is hired for a set time cannot be removed from the job during that time unless he was negligent. Secondly, the Pitchei Teshuva (CM 333:10) says that regarding *yeshivot*, a *rosh yeshiva* can discontinue a *ram*'s position only until the beginning of a *z'man* (yeshiva session).

According to the first opinion regarding the grounds for dismissal, since it was wrong to fire *pl*, he certainly gets paid until the end of the year. According to the (majority) opinion that it was a proper firing, since the dismissal was justified, *def* does not have to pay his salary until the end of the year, and this is how the *beit din* ruled.

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