HEMDAT YAMIM חמדת ימים

PARASHAT MISHPATIM **27 SHEVAT 5769**

This edition of Hemdat Yamim is dedicated to the memory **R ' Meir ben Yechezkel Shraga Brachfeld** o.b.m

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This week.....

The Torah of Peaceful Litigation

Our *parasha*, which begins after the drama of *matan Torah* (the giving of the Ten Commandments) goes into great detail about an area of the Torah that deals with monetary law. This extensive immediate treatment certainly demonstrates how central these laws are to the Torah. We will show how it is even more central to *matan Torah* than one might think.

The *gemara* (Sanhedrin 56b) says that one of the *mitzvot* that were given to Bnei Yisrael at Mara (Shemot 15:25), before *matan Torah*, was *dinin* (monetary law). The Me'am Loez (Shemot 21:1) says that this was done to help ensure one of the basic requirements of *matan Torah*: unity within the nation (see Shemot 19:2 with Rashi). As long as people had their financial grievances one with the other and had no system to settle them, there could not be true harmony.

If monetary laws were given before Sinai, why are they mentioned only afterward? It is clear from the *gemara* that the individual laws of how and based on what to rule were given at Sinai, not before it. The crucial thing before *matan Torah* was that a system was in place through which people knew they would receive a just conclusion to their disputes. It was the system that brought peace more than the individual rulings. This also explains why Yitro's judicial ideas, which expanded the judicial system and made it more user-friendly, appear in the Torah prior to Sinai even though, according to many commentators, Yitro suggested them only months later.

The Me'am Loez also points out that the law, truth, and peace, which Pirkei Avot (1:18) tells us keeps the world going, all apply to the judicial system. If we take a look at an important *gemara* in Sanhedrin (6b), regarding the concept of compromise, we will see a slightly different view of these concepts. *Din* (a standard ruling of *beit din*) would be an example of *emet*, as the *dayanim* faithfully apply the truths of the Torah. A compromise is an example of *shalom*, which is not likely to work out to be an absolute truth but puts the conflict to rest as quietly as possible. We accept the opinion that compromise is preferable to *din*.

This conclusion actually fits in beautifully with the thesis we have been developing. The specific laws and rules that the Torah teaches us to use in ruling are important truths, which we cherish as we do all the *halachot* of the Torah. In fact, one who chooses to adjudicate by a different system is severely insulting the Torah (see Beit Yosef, Choshen Mishpat 26), even if he feels he will gain regarding peace. However, ultimately the most special element of our judicial system is that one can use a system approved by the Torah to create and maintain relationships within our nation. This preserves the peace that makes us thrive not only as a religion but as a cohesive nation that accepted the Torah "as one man with one heart."

Question: May one set an automatic coffee maker on a timer so that it brews the coffee on Shabbat morning? (Obviously, the ingredients would be put in and the settings adjusted before Shabbat, and no electrical switches need to be pressed to remove the coffee.)

Answer: The *gemara* has two main discussions about allowing things to cook by themselves on Shabbat (*shehiya*). One (Shabbat 36b-38b) discusses when it is required to have the fire covered or removed for fear of stoking coals. One opinion says that if the food has reached *maachal ben d'rusai* (nominally cooked) it may be left as one desires, while another requires covering. Apparently, if there the fire is covered, so that there is no concern of stoking the coals (or its equivalent), one could leave any food. According to a wide spectrum of *poskim*, a non-adjustable heat source needs no covering even when it contains uncooked food. Even if a coffee maker has many settings and controls, if it has only one level of heat (and only one speed of brewing), having the machine activate the brewing process on Shabbat would be permitted from this perspective.

Another *gemara* (Shabbat 18b) deals more broadly with systems set up before Shabbat that would be forbidden if set up on Shabbat. Regarding dyeing wool, the *gemara* says that due to a concern that one will stir the cauldron, he must seal the lid before allowing it to operate on Shabbat. Regarding uncooked food left on the fire from before Shabbat, the *gemara* refers only to a problem of stoking coals and not of stirring. R. Akiva Eiger (to Shulchan Aruch, Orach Chayim 253:1) suggests that if the food started cooking but did not reach *maachal ben d'rusai* before Shabbat started, it would be a concern (for which a *blech* or a non-adjustable heat source would not help). Although the Biur Halacha mentions this stringency, it appears that the great majority of present-day *poskim* accept the Shulchan Aruch's ruling (OC 253:1) that when the rabbinic concern about stoking coals is handled, even uncooked food can be left on the flame (see Orchot Shabbat 2:68).

The Tzitz Eliezer (II, 6), nonetheless, forbids putting uncooked food in a place which will be activated by a timer on Shabbat. He bases himself on the Ramban (Shabbat 18b) who deals with the question of why the concern of stirring is not raised regarding cooking food. One of his answers is that the Rabbis were concerned about stirring only in regard to dye. However, his first answer is that the serious concern of stirring food applies only in the beginning of the cooking process, which, classically, happens before Shabbat. However, says the Tzitz Eliezer, when the timer activates the cooking process on Shabbat, we should be concerned about stirring. Rav S.Z. Orbach (Minchat Shlomo II, 34.1) responded that we accept the Ramban's lenient answer, that we are not concerned about stirring, paving the way for timers starting cooking on Shabbat. The way (at least most) coffee machines work, it is anyway not feasible to stir the coffee as it brews.

A final issue is that the Rama (OC 252:5, as opposed to the Shulchan Aruch, ad loc.) forbids operating from before Shabbat a mechanism that is forbidden to operate on Shabbat if it makes noise because it is degrading for Shabbat (*avsha milta*). It is permitted only if people often set up the mechanism in advance and thus there is no reason to suspect Shabbat desecration occurred (ibid., regarding a clock that chimes). Since coffee makers are usually not operated on a time delay, this could be a problem. However, most machines are probably not loud enough to cause a prohibition, which exists when it can be heard in another room (see Igrot Moshe, OC IV, 70).

There are (and will be) many models of coffee makers, so one must ensure that his meets all the requirements and not assume or quote us as giving a blanket leniency.

Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, *z.t.l.*)

The Two Elements of *Geula* (Redemption)

(based on Berachot 1:114)

Gemara: "Please (*na*) speak into the ears of the nation so that a man will ask from his counterpart …silver and gold utensils." *Na* is a language of request. Hashem said to Moshe: "I request of you to go and request of Israel that they should borrow silver and gold utensils."

Ein Ayah: The main higher intention of the exodus with great riches was to elevate the spirit of the nation, which had been in the lowly status of slavery for many years. In that state their spirits were lowly, and they lacked the initiative to desire greatness. Therefore, it was fitting that they train themselves to desire big things so that they would come to aspire for greatness in the levels of the spirit and the higher personal characteristics.

In order that one should not think that the intention was to aspire for the love of gold and silver, the matter was not presented as a command but as a request, so that the matter would come out in the optimal manner. Their lowly spirit would be elevated when they saw themselves surrounded with riches and with it they would know that this was not the ultimate purpose because all matters of intrinsic value received a command or a warning. This one was presented as a favor, lest Avraham have a claim [that the promise of slavery was fulfilled and that of riches was not].

The matter of Avraham's claim must also be seen in this light. His whole goal had been to establish a nation that recognizes Hashem and informs the world, by its existence and its behavior, of His great name. That is the way Avraham acted in his lifetime, as a unique individual. In order to have an impact on many nations, one needs the greatness of spirit and aspirations even for such things as ownership and possession of material wealth. The commercial world is a setting where many peoples are bonded one with the other and one learns from the ways of the other. Therefore, by means of the love of money, which causes one to buy and sell and, when things go well, brings on "prosperity through justice" it also causes the desired goal of Israel spreading the light of Hashem in the world. It would be different if Bnei Yisrael were in a less ambitious mindset and sufficed with being only shepherds and farmers. Then they would have nothing to do with other peoples and would be unknown among the nations. How then would the light of Hashem spread in the world?

Avraham knew that his descendants would have to undergo the purification cauldron to burn out their impurities and get them used to the subservience that is necessary to function under the yoke of Torah and *mitzvot*. Therefore, Avraham was interested that his goal of global recognition of Hashem be met. This could be done by means that his descendants would, after extrication from the lowliness of slavery, get used to an elevated spirit and the aspiration for lives of international social interaction that accompany the desire for increased property.

This was explained nicely with a parable of a prisoner who awaited getting out of jail and did not want to wait longer in order to receive a lot of money. Israel, from the perspective of their lowly status, were not able to imagine a greater happiness than to be extricated from slavery and become independent. Therefore, they had to be requested to seek enrichment in order for the final goal to be reached. It is true that they were anyway going to receive the spoils found on the banks of the Red Sea, which, the Rabbis tell us, exceeded that which they took from the Egyptians before. However, maybe the Egyptians pursued them until the Red Sea because Bnei Yisrael took their money. Alternatively, it is possible that the riches prior to the splitting of the sea were needed to elevate the spirit so that they could reach the level of perceiving the Divine at Yam Suf, as the Rabbis say, that a maidservant on the sea saw more than great prophets.

P'ninat Mishpat

Determining Whether a Transfer is a Gift or a Loan

(based on Halacha Psuka, vol. 52 - A Condensation of a Psak from Techumin XXVII, pp. 349-357)

Case: The plaintiff (=*pl*) and the defendant (=*def*) are a couple that is getting divorced. During their marriage, *pl*'s brothers helped the couple buy and renovate an apartment, contributing close to 200,000 *shekels* in cash and labor. *Pl* now demands that *def* pay her share of returning the money that *pl*'s brothers gave. *Def* says that she knows that some of the money in question was given as a present and is not sure about the status of the rest of the money.

Ruling: The Rama (Choshen Mishpat 246:17) says that one who tells his friend to eat with him is to be assumed to be lending him the food's value, and the recipient is not believed that it was given as a present. He says, therefore, that if a son-in-law eats at his father-in-law's house beyond the time the latter agreed to support him, the former has to pay for what he ate. We see that when money is given without stipulation from a person to one with whom he has a relationship, it is assumed to be a loan.

The *gemara* (Ketubot 12b) brings different opinions regarding a case where one is sure that his friend owes him money (*bari*) and the friend says he is unsure (*shema*). We rule that in such a case, the *bari* cannot extract money without proof. There is a *machloket* among *Acharonim* if the halacha is different in a case where one admits that he received the money but is unsure whether it was as a present or a loan. The Sha'ar Mishpat (75:6) says that he must pay, whereas the Maharashdam and Imrei Bina (To'ein V'nitan 7) say that he is still exempt. Therefore, regarding the money about whose nature *def* is not sure, the halacha seems to depend on that *machloket*.

The Yeshuot Yaakov (Even Haezer 50:2) says that although usually we do not assume that money was given as a present, if one gave to his sister, we have to take seriously the possibility that it was a present and thus if the recipient is unsure, it is a regular case of *bari* and *shema* and the recipient is exempt. Since we have already seen that the Rama says that one can extract money from a son-in-law for his support, it appears that every case must be considered according to its own merits. The more distant the relative and the larger the sum of money involved, the more likely we are talking about a loan. In our case, the brothers gave large sums of money, and they are not very well off. Therefore, it is most likely that the money was a loan, and *def* should pay for the sums she does not know about.

Regarding the money that *def* says she knows was a gift, she is believed to hold on to her money, but halacha requires her to swear that her claim is true. Since we no longer administer oaths and the *minhag* is to replace them with partial payment, *beit din* required her to pay a significant portion of that sum as well even though her arbitration agreement does not call for compromise.

Baba Kama 49-55

Two Damagers but Only One Liable

This week in the Daf Hayomi (53a-b), we learned Rebbi Natan's rule: If there are two damagers, even though, in principle, each one should pay half the damage, if for some reason one of them cannot be held liable, the other must pay the entire cost of the damage. Therefore, if two animals belonging to two people caused damage, each owner has to pay for half of the damage. However, if one of the animals was Hekdesh (sanctified to the Temple), in which case it cannot be held liable, the owner of the other animal has to pay for the entire damage.

The Ketzot Hachoshen (410, 3), based on this principle, questions an interesting Halacha in the Shulchan Aruch. There are situations where, if a judge erred and mistakenly made a litigant pay, then he must compensate the litigant. If the court was comprised of three judges who erred, each judge pays a third of the money lost. What happens if it was a court comprised of three judges, but only two erred, and the third judge was correct, but his opinion was not accepted, because he was in the minority? The Remma (Choshen Mishpat 25, 3) rules that the judge who was correct is exempt, while the two judges that erred must each pay a third of the loss, and the litigant loses the remaining third. The reasoning of the Remma is that, since the two judges could not have ruled without the third, they cannot be held liable for the entire loss. The Ketzot questions this ruling in light of Rebbi Natan's principle. Why do we not say that, although all three judges caused the damage, since the judge who was correct cannot be held liable, the other two judges should cover the entire loss?

In order to resolve this question, the Ketzot quotes a passage in the Gemarah that we learned a few weeks ago in the Daf Hayomi. The Gemarah (13a-b) deliberates regarding an ox dedicated to be a Korban Shelamim (a sacrifice where most of the animal is eaten by the owner and only certain parts, called Imoorim, are burned on the altar), that caused damage. Regarding a Shor Tam (an ox that does not usually gore) that gored, the damage is only paid up to the value of the ox. However, regarding a a Korban Shelamim, only the part of the meat which is eaten by the owner is considered to be his property, while the Imoorim, which are burnt on the altar, are not considered to be his property and their value cannot be taken into account when paying for the damage. Furthermore, the Gemarah states that, even if there is enough value in the meat to cover the damage that the owner is required to pay, he still does not pay all of it, but rather one calculates, based on the value of the meat in comparison to that of the Imoorim, how much of the damage is attributed to the meat and how much to the Imoorim, and only that attributed to the meat must be paid. The Gemarah explains that this ruling is in accordance even with the principle of Rebbi Natan, since only when the damagers acted separately can we hold one liable for the entire damage, but in this case, since the meat and the Imoorim are part of the same ox, and one cannot cause damage without the other, one cannot hold one of them liable for the entire damage.

Based on this distinction, the Ketzot resolves the ruling of the Remma. Three judges comprising a Beit Din, a judicial court, do not function separately, but rather they together form a Beit Din, and the ruling of the Beit Din is what makes the litigant pay. Therefore, if the ruling of the Beit Din was mistaken on the basis of a majority opinion, and thus the minority opinion cannot be held liable, the two judges cannot be held liable for the entire damage, since they did not act independently, but rather as part of the Beit Din. Therefore, they are only liable for their relative part in the Beit Din, which is two thirds.

Another interesting discussion regarding the principle of Rebbi Natan is what happens when there are two damagers and both are liable, but one cannot pay because he does not have any money. The Tur (Choshen Mishpat 410, 29) quotes the opinion of the Rammah who states than in this case as well, the other damager must pay for the entire damage. The Tur, however, disagrees and states that only when one cannot fundamentally be held liable is the other damager required to pay for the entire damage. Both opinions are quoted in the Shulchan Aruch (Choshen Mishpat 410, 37).

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