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of Bergen County

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**Parashat Mishpatim**

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## THE SLAVE WHO WOULD NOT BE FREED

by *Rabbi Steven Finkelstein*

Picture this scene: after a prisoner spends 20 years in prison, the warden swings open the gate and tells him, "This is it; you are free!" Imagine if the prisoner responds, "I think I'll just stay here. I have my bed, I decorated my walls, and I know the lunch schedule." The warden would look at him like he is crazy! Does he know what he is passing up?

Similarly, in this week's Parashah, we read about the Eved Ivri, Jewish slave, whose term as a slave has concluded at the beginning of the Shemittah year. His freedom is handed to him and he has the opportunity to live his life as a free man. Think about what that would mean to you if you were a slave--the opportunity to regain control of your time, your choices, your decisions, and your life. But this slave chooses to remain a slave. Why would a slave choose slavery over freedom? What is holding him back, and how do we address the situation?

As a therapist, I might theorize that this slave is experiencing some type of anxiety. Perhaps he is afraid of the unknown: what will freedom mean for him? How will he earn a living? Will he be able to integrate back into society? As the famous expression goes, "The evil you know is better than the evil you don't." This slave needs help working through these concerns so that he can embrace his newfound freedom.

Interestingly enough, The Torah lays out a completely different response to the slave's reluctance to embrace his freedom, and in doing so, it reveals to us what is truly at the root of his peculiar actions. The Torah tells us "*VeHiggisho El HaDelet O El HaMezuzah, VeRatzah Adonav Et Ozno BaMartzei'ah, VeAvado LeOlam,*" "[The slave's master] should bring [the slave] to the door or the doorpost, and the master should pierce [the slave's] ear with an awl, and [the slave] will serve him forever" (Shemot 21:6).

The Torah's response to the slave's rejection of freedom is to take the slave's ear and hammer it to the doorpost. Why is this our response? The Gemara in Kiddushin explains, "*Ozen*

*SheSham'ah Koli Al Har Sinai BeSha'ah SheAmarti 'Ki Li Bnei Yisrael Avadim,' VeLo Avadim LeAvadim--VeHalach Zeh VeKanah Adon LeAtzmo--Yirza,*" "The ear that heard at Mount Sinai 'The Children of Israel are [Hashem's] servants' (VaYikra 25:55) not servants to anyone else--and he went and acquired a master for himself--[his ear] should be pierced" (Kiddushin 22b).

The Gemara is helping us understand that the slave's problem is not an anxiety problem; it has something to do with his ears. Yet we are left with a question again: if the slave's problem is an attention issue, that he missed the instruction at Har Sinai and does not know that he is forbidden to enslave himself, it would make sense to punish him by piercing his ear. The piercing would remind him, "Next time, be sure to listen." The problem is, the Gemara begins by telling us "*Ozen SheSham'ah BeHar Sinai,*" "this ear that *heard* at Mount Sinai." Clearly the slave *was* paying attention at Har Sinai and *did* hear Hashem's condemnation of willful human slavery. Why, then, does he not obey Hashem?

Our Mashgiach Ruchani, Rav Ezra Wiener, taught me that whenever the word "Shama" is used in the Torah, Targum Onkelos will translate it as either "Shama," "heard," or "Kibeil," "accepted." Sometimes, when we hear words, we are just doing the physical act of hearing the sounds, while other times, we are Mekabeil, contemplating and accepting the message that we hear. Perhaps we can use this idea to suggest that this slave heard the words at Har Sinai, but he only heard them on the physical, superficial level. He was not Mekabeil the words. He did not stop to contemplate the immense opportunity that Hashem offered him with the words "Ki Li Bnei Yisrael Avadim," the opportunity to break free from the mundane and to use every decision, action, and second of his life to serve his true master, the Ribono Shel Olam.

Without a deep appreciation for what it means to be a servant of Hashem, it easy to understand why the slave would choose to remain enslaved to a human master. With his human master, he has food, shelter, limited responsibility, and limited risks.

Rav Chaim Friedlander, in *Siftei Chaim*, suggests that this slave is not alone. Throughout history, we see Jews who lack appreciation for the great opportunity that Hashem presents to each and every one of us with the words "Ki Li Bnei Yisrael

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Avadim.” Those Jews choose to look elsewhere to find other gods and desires to serve and worship.

As we read Parashat Mishpatim this week with the Aseret HaDibrot of Parashat Yitro still fresh in our minds, let us take the opportunity to contemplate and consider the great opportunity that we each have to singularly dedicate our lives to the service of our true Master.

## THE ETERNAL RELEVANCE OF TORAH LAW

by Eitan Leff '18

In Parashat Mishpatim, Hashem presents us with civil laws that deal with damages and loans. One such law is “*Ki Yichreh Ish Bor VeLo Yechassenu, VeNafal Shammah Shor O Chamor, Ba'al HaBor Yeshalleim; Kesef Yashiv LiV'alav, VeHamet Yihyeh Lo,*” “If a person digs a pit and does not cover it, and an ox or a donkey falls into it, the owner of the pit shall pay; he shall return money to its owner, and the dead body shall be his” (Shemot 21:33-34). If a person makes a pit and does not cover it and an animal falls in, the pit-maker has to pay for the animal. The Gemara (Bava Kama 48b) extends from the Pesukim to rule that if a person lets his ox fall into someone else’s water pit, thereby ruining the water, the owner of the animal has to pay for the damages. It falls under the category of Keren, deliberate damages, and the owner has to pay for either half the damages or the full amount depending on whether the animal is a repeat offender or not. However, there is an exception to this law: if the water is ruined only after the animal is sitting in the water for a while, the damage falls under the category of Bor, immobile and passive damages, as the damage can only be construed as deliberate when the animal immediately ruins the water. The Shitah Mekubetzet (ibid., citing Ra’ah) notes that if the ox-owner pushed the ox into the pit and the water became damaged, it would be considered Keren, deliberate and direct damage, in both cases, and the owner would then need to pay.

The Gemara (Bava Kama 28b) additionally derives from these Pesukim that if a person or inanimate object was damaged by falling in a person’s pit, the pit-maker would not need to pay, because the Pasuk only states “*Shor O Chamor,*” “ox or donkey.” Using these sources, we can analyze a case with broad implications. Let us imagine that someone is driving on Friday afternoon and passes his friend, who is carrying grocery bags and walking home. The driver tells his friend to come in the car to be driven home. After Shabbat, the driver enters his car and finds that the car smells like rotten chicken. Looking in the back, he finds a

bag with rotten chicken that was left in the car by his friend on Erev Shabbat. The driver tries to get rid of the stench, but is unable to, so he needs to get the car reupholstered. Naturally, the driver wants his friend to pay for the car’s reupholstery.

According to the guidelines of Bava Kama 28b, it would appear that the chicken falls under the category of Bor, because it was only over a longer period of time that the chicken began to rot. If so, then the friend who left the chicken in his friend’s car is not obligated to pay. On the other hand, the opinion cited by the Shitah Mekubetzet would argue that the friend “pushed” the damaging chicken into the driver’s car, and thus he would indeed be obligated to pay. However, one major difference to note between the case of the ox and the case of the rotting chicken is that by the ox, the owner of the pit did not want the ox in the pit, while by the case of the rotting chicken, the driver told his friend to come into the car.

In his book, *VeHa'arev Na Volume II*, Rav Zilberstein relates that he posed this question to his father-in-law, RavYosef Shalom Elyashiv zt”l. Rav Elyashiv answered that the driver let his friend in on the presumption that he would not leave anything damaging, and therefore the owner of the chicken has to pay for the reupholstering of the car.

Cases such as these leave an important message for us as Jews in the modern world. The rules outlined in Parashat Mishpatim may seem obsolete at first glance, but just because donkeys and oxen do not constitute the main means of transport in the modern era does not mean that these concepts may not be applied to everyday life. In an ideal world, these guidelines for punishments would not come into play, but damages do occur, and we are lucky enough to know how to adjudicate such cases in today’s day and age.

## SHOOTING DOWN A FRIENDLY AIRCRAFT - TABC MODEL BEIS DIN 2015 CHAMPIONSHIP PART

Two

by Rabbi Chaim Jachter

### Introduction

Last week, we began our discussion of the following situation: A pilot in the Israeli air force is sent on a mission to destroy an enemy platoon. As he is en route and outside the range of communications, the air force learns that the intelligence was flawed and the target is actually an area populated by its own soldiers. According to Halacha, is Tzahal permitted—or even obligated—to shoot down its own plane, sacrificing the pilot for the sake of the soldiers?

This question, based on a tragic, real-life scenario, was put to students from eight U.S. high schools who squared off in the second annual Beis Medrash L'Talmud-Lander College for Men Model Beis Din competition. The cutting-edge tournament invited teams to the Kew Gardens Hills campus to match wits on the ramifications of this complex Halachic quandary. The winning team in 2015, for the second straight year, was the Torah Academy of Bergen County (TABC) in Teaneck, New Jersey.

Since the teams were expected to present arguments both for and against shooting down the plane, we present both sides of the argument. Last week we presented eight arguments against the shooting and this week we present seven arguments in favor of the shooting.

*Arguments Permitting/Requiring Shooting Down the Plane*

1. Pesachim 25b – The Gemara presents the Sevara (reason) why one cannot kill another to save his own life. The Gemara explains, in a very widely known idea, “how does one know if his own blood is redder than the other individual’s blood (“Mai Chazit”). One could argue that this line of reasoning applies only to killing one individual to save the life of only one other individual. However, one could argue that it is permissible to kill one individual to save many others since the blood of many people is indeed redder (“Sumak Tefei”) than the blood of only one individual.
2. Sanhedrin 72b – This passage in the Gemara regards a Katan (minor) as a Rodeif<sup>1</sup>, despite having no Da’at (competent and mature decision making ability). This tragically occurs in the Israeli army as, sadly, Arab children fire weapons such as hand-held rockets. The fact that a Katan is regarded as a Rodeif despite his lack of Da’at demonstrates that one could be classified as a Rodeif even if he is a Rodef B’Oness (with no intention to harm others). Actions of a Katan are regarded as Oness (e.g. Pitui Ketanah Oness Hu, statutory rape).
3. Shmuel II Chapter 20 – the case of Sheva ben Bichri who was killed to save an entire town, shows that the rule of Ein Dochin Nefesh Mipnei Nefesh (one may not kill to save another) has exceptions.
4. Rambam (Hilchot Rotzei’ach U’Shemirat Nefesh 1:9) classifies a fetus as a Rodeif, showing that even a Rodeif B’Oness is regarded as a Rodeif. The Rambam (Hilchot

Choveil UMazzik 8:15) even compares heavy baggage on a ship that is danger of sinking to a Rodeif. Rav Zilberstein (Shut VeHa’arev Na Cheilek 3:337) even raises the possibility of electricity being a Rodeif in a case of an electrician in danger of being electrocuted to death if he does not turn off the electricity (which in turn will kill someone in the building attached to a breathing machine).

5a. The Chazon Ish (Choshen Mishpat Sanhedrin, no. 25, s.v. VeZeh LeAyein) describes a situation in which a bystander witnesses the release of an arrow aimed at a large group of people. The bystander has the ability to rescue the intended victims by deflecting the arrow; however, if he does so, the arrow will claim a single victim who heretofore was endangered in no way whatsoever. The Chazon Ish raises the possibility that the bystander should deflect the arrow and cause the death of the one individual in order to save the lives of the many. He writes “perhaps we should make every effort to reduce the loss of Yisrael life as much as possible.” The Chazon Ish explains that one might consider the act of the bystander as fundamentally an act of rescue and not an act of murder. Thus, according to the Chazon Ish it might be permitted to kill the pilot to save many lives as an act of Hatzalah.

5b. The Chazon Ish argues that the Yerushalmi (cited in last week’s discussion) forbids handing over the one individual for death even to save a large number of Jews, since it is a cruel act to send someone to his death. The act of deflecting the arrow, on the other hand, is a “Ma’aseh Hatzalah”.

5c. The Chazon Ish cites the Gemara’s evaluation of the actions of Lulinus and Papus as possible proof that we should make efforts to limit the loss of life as much as possible. Rashi to Bava Batra 10b (s.v. Harugei Lod) cites a remarkable story about a wicked Roman leader named Turinus who found his daughter dead in the city of Lod. He immediately accused the Jews of killing her and decreed that all the Jews of Lod be slain in revenge. In order to save the town from the terrible decree, two holy Jewish brothers, Lulinus and Papus,

<sup>1</sup> Halacha sanctions and even obligates killing a Rodeif, one who attempts to kill another.

pretended that they had killed the girl and they were executed. The Gemara states that Lulinus and Papus received the highest possible reward in Olam HaBa (heaven). Roi Klein is another example of a heroic Jew who went beyond Lulinus and Papus who gave themselves up to the Romans to save the lives of many Jews. Roi Klein jumped on a grenade in the Second Lebanon War in July 2006 to save the lives of the soldiers he commanded. Rav Osher Weiss, one of the leading contemporary Poskim, compared (in a speech at Congregation Rinat Yisrael in Teaneck in August 2006) Roi Klein to Lulinus and Papus and said that his action represented the highest level of Kiddush Hashem.

5d. The Chazon Ish's suggestion goes even a step further and suggests that a third party may kill an individual in order to save the many.

5e. Text of the Tekes Hashba'ah of Tzahal Soldiers –

"הנני נשבע(ת) ומתחייב(ת) בהן צדקי לשמור אמונים למדינת ישראל לחוקיה ולשלטונותיה המוסמכים, לקבל על עצמי ללא תנאי וללא סייג עול משמעתו של צבא הגנה לישראל, לציית לכל הפקודות וההוראות הניתנות על ידי המפקדים המוסמכים ולהקדיש את כל כוחותיי ואף להקריב את חיי להגנת המולדת ולחירות ישראל."  
"I swear and commit to maintain allegiance to the State of Israel, its laws, and its authorities, to accept upon myself unconditionally the discipline of the Israel Defense Forces, to obey all the orders and instructions given by authorized commanders, and to devote all my energies, and even sacrifice my life, for the protection of the homeland and the liberty of Israel."

Tzahal soldiers agree to sacrifice their lives for the benefit of the community. Thus, the pilot has agreed to sacrifice his life if necessary to save more lives as in the case of Lulinus and Papus. Thus, even the Chazon Ish, who forbids coercing someone to sacrifice his life or even to submit to a lottery to see who should be handed over to enemies, might permit shooting down the plane.

6. Rav Akiva Eiger (to Ohalot 7:6 no. 16) raises the question as to the permissibility of killing a baby emerging from its mother's womb in order to save the life of its mother when, otherwise, both mother and baby would die absent intervention. Although he leaves his question

unresolved, Rav Akiva Eiger does however cite Teshuvot Panim Me'irof, III, no. 8, who rules that such a course of action is permissible. Tiferet Yisra'el (Ohalot 7:6, Bo'az, number 10) similarly comments that, "perhaps it is permissible to sacrifice the infant in such circumstances in order to rescue the mother." We see that the principle of Ein Dochin Nefesh Mipnei Nefesh is not absolute.

7. Rav Yitzchak Zilberstein (ad. loc.) argues that even according to Rav Eliashiv, it is permissible for the soldiers themselves to shoot down the plane based on the "Chachmei HaDorot SheLifaneinu" cited in the Meiri to Sanhedrin 72b. This opinion permits those in danger (as opposed to a third party) to kill someone who is attacking him even if the attacker is not categorized as a Rodeif. Rav Zilberstein cites as a possible proof the Gemara (Sanhedrin 82a) which states that Zimri (but not a third party) would have been permitted to kill Pinchas since Pinchas was attempting to kill Zimri.

#### Conclusion

We thank Lander College for providing an outstanding opportunity for TABC and other high school students to experience the richness and eternal relevance of applied Halacha. It is a most gratifying to see youngsters confidently and competently quoting and applying Torah sources to real life situations. We look forward to sharing the rich discussions conducted at the Lander Model Beis Din competition iyH for many years to come.

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