

THE Heichal Hora'ah DEVAR HAMISHPAT BULLETIN

Clarifications in the Laws of Choshen Mishpat and Ribbis | #34 Sivan 5785

בס"ד

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- The Yom Tov of Mattan Torah - According to the Maharal's Teachings

The Gemara Shabbos (88a) writes: In the *pessukim* of Creation, Hashem added the letter ה to the sixth day, writing יום השישי, because the whole Creation pended on the sixth day of Sivan: If the Bnei Yisrael accept the Torah, the world will exist; if not, the world will return to *tohu vavohu*.

The Maharal explains (Netiv Hatorah 1) this Gemara in the following way: Torah is from the root הורה – to direct, the Torah directs us how to act. This is the revealed "direction" of the Torah. But there is more to this "direction"; the Torah directs the whole world, and the whole order of the world lies in the Torah, as the Medrash writes (Bereishis Rabba 1:2), Hashem looked into the Torah and created the world. This explains how the world's whole existence is in the Torah, since the whole direction and subsistence of the world is via the Torah. And the only way the Torah can be given in this world is to Yisrael and not to any other

nation, since only Yisrael, Hashem's nation, have a connection with the Torah. Therefore, the whole creation depends on their acceptance of the Torah, because if Yisrael accept the Torah the world will have a grip in the Torah, and then the world can be directed by the Torah.

The Midrash (Bamidbar 7:1) writes that all the sick were healed at Har Sinai. This healing is not only a *segulah*, but a direct connection with the Torah.

Sickness is a change in the world's order, while Torah is the world's correct order. After receiving the Torah, the Bnei Yisrael returned to the correct order and were therefore cured from all illnesses and blemishes. Consequently, Torah is better than the best medicine: even the best medicine, which strengthens one part of the body, must have a negative effect on another part of the body. If it increases the heat of a part that should be hot, it will also heat the part of the

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Editorial

With praise and thanks to Hashem, we present some of the *chidushim* from our *Beis Medrash* and *halachic* clarifications, for the benefit of the *lomdei Torah*, who will certainly enjoy the material in this pamphlet.

We have added a section of advice and help in monetary matters, since those who take *halachic* advice in these issues save much disappointment and grief.

As the Alshich writes (Devarim 4:8) clear words regarding the importance of understanding that our minds cannot understand the Torah's monetary laws:

"These non-Jews mistakenly think that although the mitzvos are unique to the Jews, the משפטים, the logical monetary laws, are not, since the non-Jews also have monetary laws. But they are mistaken, because the Torah's monetary laws connect us to Hashem just like the *mitzvos*. This is the meaning of the *passuk* וְיָדַעְתָּ כִּי גִּדּוֹל אֲשֶׁר לֹא יִמָּצֵא כֵּן לְעַמּוּקֵי חֻקֵּי וּמִשְׁפָּטֵי צְדִיקִים – 'which great nation has righteous mitzvos and monetary laws,' the mitzvos and monetary laws are equal, rebutting the non-Jews' claim that they also have monetary laws. As we wrote in *parashas Mishpatim*, the non-Jews' monetary laws are only correct physically, but these laws don't have any holy dimension, while משפטי ה' אמת, Hashem's monetary laws

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Heichal Hora'ah Devar Hamispat

For shaalos and halachic clarifications Monetary Dinim and Hilchos Ribbis
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בראשות הגאון האדיר רבי נפתלי נוסביום שליט"א
ובהכוונת הגר"ש סג"ל שליט"א

body that should be cold. And vice versa. But the Torah returns the body to its initial status, without any defect.

This explains the Gemara (Eruvin 54a), "one who is on a journey and doesn't have anybody accompanying him, should engage in Torah." The populated part of the world is not dangerous, only the desolate areas are places of danger. Why? Because there are no people there, and where there are no people, other powers have control. If he is accompanied by somebody, he is part of the world and then the other powers can't affect him. But if he doesn't have anybody with him, and he is in danger from these other powers, he should engage in Torah. The Torah, as we said, is the order of the world, and if so, even one who goes in the desolate areas is still in the world if he studies Torah, and he won't be hurt.

This also explains another point: The Torah writes, ויחן שם ישראל נגד ההר, which Chazal teach means they camped as one person with one heart. How does Torah cause *achdus* between Jews? The answer is, every dispute between two people is rooted in the fact that they don't have a fixed place, and therefore one person enters the place of another person, causing friction. If each person knows his place, and knows that his place doesn't touch that of another's, there is no cause for *machlokes*. Without Torah, a person doesn't have a fixed place and therefore he could enter another person's location. But with Torah, which is the order of the world, every person has his own fixed boundaries, bringing peace to all.

[We could add, this is hinted in the *passuk* על מקומו יבא בשלום, if every person has a מקום – a place, there will be peace to all of them. We can also explain according to this the mitzvah of *bagbalah* before *Mattan Torah*, where each person knew exactly his place and what his boundaries are, and this is the aspect of Torah, the world's order, that every person has his own personal *avodah*, his own personal *kebalas baTorah*, and his own personal world. Accordingly, after a person studies Torah it is termed תורתו, **his** Torah, it directs him personally in the place he is meant to be and the *avodah* that is expected from him. This is the basis of the concept עיני הדין – כפי ראות עיני הדין – however the *dayan* thinks, and similarly the Torah doesn't set any rules about *middos*, since the Torah is for every person separately. We can now understand why בעצרת הכל מודים דבעין נמי לכם, on Shavuot we must also give the body food and enjoyment. Why especially on Shavuot, the day we reached the high levels of *kedushah*, do we have to give the body its *lechem*? But this is the point of Shavuot – the Torah teaches each person the way and makes order in his world, and to stress this point we give the body its *lechem*, each person his own world.]

are also spiritual. Whoever obeys the Torah's *mishpatim* brings much *kedushah* in its root, and is *maspia* much Light. Just as one who performs a mitzvah creates an advocate angel, similarly one who acts in accordance with Hashem's *mishpatim* brings a holy power, from Hashem's power. This is why the Torah writes חוקים ומשפטים צדיקים, **righteous** *mishpatim*, and not חוקים ומשפטים צודקים, **correct** *mishpatim*, because they are the power of Hashem, and from every *mishpat* is created an angel, which are the many משפטים צדיקים referred to in the *passuk*. These angels, created by following the Torah's *mishpatim*, are termed משפטים צדיקים because they are created from the משפטי צדק."

Now, before the Yom Tov of *mattan Torah*, we thank Hashem for the Torah given to us, as the Bas Ayin explains the Gemara's words דאי לאו האי יומא כמה יוסף נעשה ונשמע, נעשה ונשמע. Only that the Jews were so embarrassed to receive the holy Torah, and they sought to make more *perishus* and preparation, until Hashem had to force them to receive the Torah, albeit a day later. That is why the Torah is called זמן מתן תורתנו – the giving of **our** Torah, and not זמן מתן תורתך – the giving of **Your** Torah, due to our embarrassment and humility, the Torah was given a day later and was called **our** Torah. Since Rav Yosef was the pinnacle of humility, he said אי לאו האי יומא כמה יוסף איכא בשוקא, if not for that day which teaches us the important virtue of humility, with which we received the Torah as a present, which is why it is called זמן מתן תורתנו, the giving of **our** Torah, כמה יוסף איכא בשוקא, what would he be worth, since Rav Yosef didn't acknowledge any good *middos* to himself."

Needless to say, although the rulings stated here are based on the *poskim*, the ruling can differ when even one small detail is changed, so every matter must be brought to the Rabbanim.

Let us conclude with the words of the Akdamus, רבותא דיעבד לי כד מטיא שעתא... ישלם גמולא לסנאי ונגותא... עליה רמזי דין הוא ברם באמתנותא שברנא ליה בשבין תקוף המנותא... זכאין כד שמעתון שבח דא שירתא קביעין כן תהוון בהנהו חבורתא ותזכון די תתבון בעילא דרתא ארי תציתון למילי דנפקין בהדרתא – "the great things He will do to me when the time comes ... He will pay back those who hate and cause sorrows ... we will point to Him, saying 'this is Him!' but with fear, we waited for Him with our strong *emunah* ... how merited you are to hear this song when you are in this group, and you will merit to be on the highest levels when you listen to His words that are said with splendor."

The editorial board

Sivan 5785

Halacha Insights – *Mechusar Amanah*

Mechusar Amanah - Breach of Faith

Although we wrote above that without a *kinyan* there is no obligation to keep one's word, nevertheless, if two people discuss and agree on something, or they write down something (as Rashi explains Bava Kama 79b), the one who retracts is a *Mechusar Amanah* (breach of faith), as derived from the *pasuk* (Zefania 3:13) שארית ישראל לא יעשו עוולה – "the remnant of Yisrael won't commit injustice." The *poskim* write that the Rav or Beis Din should publicize the name of the person who is *Mechusar Amanah* in order to shame him and to force him to stand by his word, although Maharam Mintz writes that nowadays we are not able to do so, for several known reasons.

These *dinim* of *Mechusar Amanah* only apply if the parties have agreed on the price of the sale and the main details of the sale, but if they have not yet determined the price, the prohibition of *Mechusrei Amanah* does not apply. *Mechusrei Amanah* is also applicable regarding a gift, but in the case of a large gift where the receiver does not fully believe that he will receive it, the giver is allowed to withdraw from his intention. The definition of "large gift" and "small gift" depends on the wealth of the giver, as explained in Shaalot Uteshuvot Betzel Hachachmah.

As explained in *siman* 243:2, if a person said he will give a gift to another person, even if he didn't say it to the recipient and the recipient doesn't even know about it, if he retracts he is *Mechusrei Amanah*.¹

The same *din* applies regarding rental, if a person told the renter that he will rent his home or car, he is obliged to the *din* of *Mechusrei Amanah*. Similarly regarding hiring workers, the hirer may not retract due to the *issur* of *Mechusrei Amanah*.

Similarly, any favor a person says he

will do for another person, is included in the *din* of *Mechusrei Amanah*.

All these *dinim* of *Mechusrei Amanah* are applicable when a person intended to do a certain act, and later retracts from his initial intention. But if at start he didn't intend to follow through with what he said, he is speaking hypocritically and commits the *issur* *Torah* of הין צדק in which the *Torah* prohibits a person from talking אחד בפה בלב ואחד בלב – "with one sentiment on his lips but a different one in his heart."

However, if there is a change in price, there is a *machlokes* among the *poskim* if this is an acceptable reason to retract one's word. Some are of the opinion that if the price changes, he wouldn't have agreed to the deal, while others nevertheless forbid to withdraw. Rema (Choshen Mishpat 204:10) brings both views, and writes that the *halachah* is according to the Raavad and Rashba, that even in the case of a change in price, there is still an *issur* of *Mechusrei Amanah* if a person withdraws from the deal. But the Bach is doubtful if that is the *halachah*.

Those who permit retracting when there is a change in price, hold that even a change in circumstances is also permitted. For example, if he hired workers and then found cheaper workers (Sema 333:1).

The Taz gives the example of a father who asked a *mohel* to circumcise his child and then he found a more experienced *mohel* or one who is a greater *tzaddik*, he may retract his word. But today the example of the Taz is probably not applicable, since nowadays people know who is a good *mohel* and who is a greater *tzaddik*, so it is unlikely that the father didn't know the situation when he spoke with the first *mohel*, and therefore nowadays it would be prohibited to retract from hiring the first *mohel*, due to *Mechusrei Amanah*. Similarly, if a person hired a *sofer* to write a *sefer Torah* for him, he cannot retract if he finds a better *sofer*,

since the *better* of the Taz is based on the fact that it is probable that if he had known of the better expert he wouldn't have hired the first one. This is only applicable if he heard of a *mohel* who he didn't know about, but if somebody ordered a *sefer Torah* from a certain *sofer*, he knew of the possibility that there is a better *sofer* in another city or country, and nevertheless he spoke with this *sofer*, so he cannot retract his word.

This is clear from the wording of the Taz, who writes "if the person **discovered** another *mohel* who is more righteous," meaning that only if he **discovered** another *mohel*, and not in any other circumstance where he knew that there are other *mohelim* of *sofrim* and nevertheless he hired this *mohel* or *sofer*.

If so, it is possible that the same applies to cheaper workers, where the Sema writes there is no *issur* of *Mechusrei Amanah*. Nowadays that anybody can enquire and reach the necessary information regarding the price of workers, and he nevertheless hired these workers, it is possible that according to all views there would be an *issur* of *Mechusrei Amanah* even if he found cheaper workers.

We must emphasize that all these *dinim* also apply to the rental of houses, *simchah* halls² and sale of apartments etc., even though the rental is only clinched after giving a downpayment, nevertheless there is an *issur* of *Mechusrei Amanah* even before paying a downpayment. This can be learnt from every *din* of *Mechusrei Amanah* where the requisition is only finalized with a *kinyan* yet nevertheless there is an *issur* of *Mechusrei Amanah* before making a *kinyan*, and the same *din* therefore applies before paying a downpayment.

Therefore, if one wants to discuss renting a hall but wants to leave open the option of renting another place, he should specifically state "without promising," or in Yiddish "*ich zug nish tzu*," and not suffice with "*bli neder*."³

1) Teshuvos Batzel Hachachmah writes that there is only a *din* of *Mechusrei Amanah* concerning a gift if the person receiving the gift will later be aware of the gift. But if he will never know about it, there is no *din* of *Mechusrei Amanah*.

2) However, if the owner of the hall forgot what he promised to one person and he rented the hall to another person, is this considered *Mechusrei Amanah*? One could claim that people tend to forget, and therefore the person renting the hall didn't rely on the owner of the hall to remember the reservation. But if he expressly agreed to send him an electronic message about the conclusion of the reservation, then there is certainly no *din* of *Mechusrei Amanah* if he did not receive notification that the hall has been reserved for him, because this is a condition in the reservation, and it is also the custom of many workers today, that without notification there is no deal at all.

3) But saying "without commitment" isn't sufficient, since there is anyway no commitment, only that he must stand by his word.

Halacha Insights - *Hilchos Shabbos*

Hilchos Shabbos **for Businessmen**

Shabbos was given for a person to rest. This rest means that he should consider all his work as if it is finished, which means he must realize that all comes from Hashem. And this is the connection between the basics of *Choshen Mishpat* and *ribis*, that everything one does is conducted by Hashem Who gives him what he earns. This is the reason of the *issur* דבר, that on Shabbos one may not discuss things that are *assur* to do on Shabbos, and the *poskim* say that it is only *assur* to discuss things that he will do in the future, since this conflicts with the Shabbos basic of considering as if all one's transactions have been done. But what has already been done may be discussed on Shabbos, since it doesn't conflict with the basic of everything being finished.

It is common for businessmen to discuss on Shabbos, deals that will be clinched in the coming week, taking advice and discussing their options. This is *assur*, as the *passuk* states one must refrain from חפץ, and also דבר דבר.

The basis of the *issur* חפץ is that a person shouldn't prepare himself on Shabbos to do work after Shabbos [but it is permissible to think and plan business matters in one's mind, provided that it does not cause distress, because מותרים – it is permissible to think about business and other things on Shabbos. However, because of *oneg Shabbos* one should refrain from thinking about any business on Shabbos. Also, discussing business that has already been done depends on the type of business: If it causes distress, it is *assur* even to think about it, but if not it is permitted to speak about it.]

The Shulchan Aruch writes two conditions for something to be *assur* due to 1: (מציאו חפץ) It can't be done in a permissible way, and 2) that it is recognizable from his actions that he intends to do an *issur*.

Therefore, a person may not inspect a house that he wants to rent or buy, or inspect what needs to be repaired in it. However, if he goes to an apartment that he wants to rent or buy, and there is a *simchah* at the place, it is not evident that he intends to do a *melachah*, in which case it will

be permitted since it is not evident that he wants to buy the house.

Shemiras Shabbos Kehilchoso writes that it is permissible to walk down the street and look at the shop he intends to buy after Shabbos [since it is not evident from his actions], but this is only permissible on a street where Jews walk and then it is not apparent that he is doing a *melachah*. But if the shop is outside the Jewish neighborhood, it is *assur* to go there to see the shop since it is evident from his actions that he is preparing himself on Shabbos for *melachah* that will be done during the week.

Likewise, the person who is expanding his apartment is not allowed to stand there and observe on Shabbos how they built it, in such a way that it is obvious that he is looking at the building.

It is permissible to say to one's friend that he has assets in another city and he wants him to guard them, and this is permitted even though the *din* regarding שמור לי ואשמור לך – "you guard for me and I will guard for you" is considered a *shomer sachar*, regarding Shabbos it is not regarded as if he is hiring workers.

Advice and Consul Given by Heichal Horaah Devar Hamishpat

Two people came before the Heichal Horaah, wanting to invest together. And they asked: What is the best way to go through with the partnership according to *halachah*, without causing any disgruntlement?

Answer: Experience proves that many of those who made partnerships were initially friendly, and therefore they didn't discuss the possibility of disagreement. But with time

this friendship diminished and they were left with their disputes and disagreements that weren't clarified beforehand. It is therefore important to clarify everything before making the agreement, however friendly you are.

As we have seen many times, *shaalos* come to the Heichal Horaah with disagreements between employers and employees, and often both are right. At the beginning of the work, they said

things that could be understood in one way or another, hoping that with time everything will be okay.

To prevent these partnership disputes, speak clearly about your intentions and conditions, and the best way would be to document it all in a *shtar* (as the saying goes, if you start a partnership as enemies, you will finish as friends).

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