**S.A.L.T. – PARASHAT MISHPATIM**

**By Rav David Silverberg**

Motzaei Shabbat

 The Torah in Parashat Mishpatim discusses the basic laws of *shomerim* – people entrusted with other people’s property, who, under certain circumstances, are liable for the damage or loss of the property. Although the different kinds of watchmen bear different levels of liability, they all share liability for *peshi’a* – negligent handling of the object. Even one who agrees to watch his fellow’s object free of charge, as a favor, who generally does not bear liability if the item is lost or stolen, bears liability if he was negligent in his role as watchman.

 The Torah (22:14) makes an intriguing exception to this rule, stating that a watchman is absolved of all liability, including for *peshi’a*, in a case of “*be’alav imo*” – if the owner works for the watchman at the time. If a worker entrusted his boss with an object, or lent him an object, the employer does not bear liability, even in cases of negligence. The fact that the owner is already in the service of the watchman results in the watchman’s exemption from all responsibility.

 One particularly interesting application of this law is the situation of a schoolteacher and student. The *Shulchan Arukh* (C.M. 346:13) rules that depending on the nature of the arrangement, if a teacher who borrows something from a student, or vice-versa, the borrower might be absolved of liability. The *halakha* in such a case, as the *Shulchan Arukh* writes, depends on who has the authority to determine the curriculum. If the teacher enjoys this privilege, and can decide at any time which material will be taught, then the students are considered his “workers,” in the sense that they are subject to his authority. As such, he would not bear liability for their objects which he borrows or that are entrusted to him. On the other hand, if the students have the authority to determine what the instructor must teach, and he is obliged to satisfy their educational requests, then he is their employee. As such, the opposite is true – if he lends something to a student, the student is not liable for loss or damage, even if this occurred as a result of the student’s negligence. The *Shulchan Arukh* adds that if the material is determined by mutual consent, and neither the teacher nor the students have the authority to unilaterally determine the curriculum, then neither party is considered an “employee.” As such, both parties would bear liability for objects entrusted to them by the other.

 Nowadays, clearly, the arrangement in most educational institutions would fall under the final category, as neither party enjoys exclusive authority over the curriculum. Both students and teachers are under the authority of the institution’s board and/or administration, and thus neither can be viewed as bound to the other with respect to the law of “*be’alav imo*.”

 This point arose in a [recently-documented case](http://communitym.com/article.asp?article_id=103844&article_type=0) of a teacher who confiscated a student’s iPad because it was disrupting her class. The teacher stored the device in the classroom’s closet, informing the student that she would return it only on the last day of school. On the last day, however, the iPad was not in the closet where the teacher had left it; presumably, it had been stolen. The student demanded that the teacher compensate him for his loss, but the teacher insisted that he was to blame. The case came before a *Bet Din*, which ruled in favor of the student. Although temporary confiscation of property was an acceptable disciplinary measure under the circumstances, the teacher bore liability for the confiscated object during the interim. The *Beit Din* decided that even though the closet was locked most of the time, nevertheless, since many school employees had the keys to the closet, and not of all them could necessarily be trusted, keeping an expensive device in the closet constituted negligence. And since she did not have the authority to determine the curriculum, which was decided by the school board, the exemption of “*be’alav imo*” did not apply, and she was liable to compensate the student.

Sunday

Yesterday, we noted the unique *halakha* of “*be’alav imo*” (22:14), which absolves a watchman of liability for the loss or damage of the object entrusted to him if he employs the object’s owner. If a worker entrusts an object with his employer, the employer does not bear liability for the object. As we saw, the *Shulchan Arukh* (C.M. 346:13) rules that this exemption could apply even in the case of a teacher and students. If a teacher has the authority to determine the curriculum, and the students are bound by his decision, then they are his “employees” with respect to this *halakha*, and he is absolved of liability if he borrows or is entrusted with their possessions. And the opposite would be true if the teacher is bound by the students’ decision of which material to study.

Rav Yaakov of Lisa (author of the *Netivot Ha-mishpat*), in his [*Mekor Chayim* (429:1)](http://hebrewbooks.org/pdfpager.aspx?req=33987&st=&pgnum=3&hilite=), observes that education differs from other professions in this regard. If a worker is hired but given the option of which precise jobs to perform, he is clearly considered an employee with respect to “*be’alav imo*,” and thus his boss would not bear responsibility for objects the worker lends or entrusts to him. When it comes to a teacher, however, his status – and that of his students – is determined based on control over the curriculum.

The *Mekor Chayim* therefore asserts that the *Shulchan Arukh*’s discussion concerning a teacher and his students applies only when the teacher works voluntarily, and does not receive wages. If he is paid by the student or students, then he is regarded as the employee with regard to “*be’alav imo*” irrespective of who determines the curriculum, just like any other hired worker. It is only if an instructor teaches without pay that his status depends on who enjoys the authority to choose the material. Since the teacher does not receive wages, he is considered an “employee” only if he had agreed to teach whatever the students choose, and he is considered the “employer” if the agreement was that he chooses the material and the students are bound by his preferences.

The *Mekor Chayim*’s ruling is yet another reason why the *Shulchan Arukh*’s ruling would not be applicable in most contemporary educational settings. Yesterday, we noted that it would not apply in most modern-day institutions because the curriculum is decided by neither the teacher nor the students, but rather the administration or school board. But even if a Rosh Yeshiva is given full authority to decide which material to teach in his yeshiva, it would seem that, in light of the *Mekor Chayim*’s ruling, he would not be considered the students’ “employer,” as he receives a salary from the yeshiva, and there is thus no employee/employer relationship at all between him and his students. He is the institution’s employee, and not his students’ employer.

Monday

 One of the topics addressed in Parashat Mishpatim is *nizkei mamon* – liability for damages caused by one’s property, such as by his animal. The famous opening Mishna of Masekhet Bava Kama lists the various categories of damage liability, and concludes by noting that the common denominator between them is “*shemiratan alekha*” – one bears the obligation to guard them. Underlying the entire concept of liability for *nizkei mamon* is a person’s responsibility to control his possessions so they do not cause damage to other people’s bodies or property. (See also the Mishna later, 9b – “*Kol she-chavti bi-shmiratan hikhsahrti et nizko*.”) Indeed, if one took the proper measures to protect against damage caused by his property – such as by properly restraining his animals – but his property nevertheless caused damage through circumstances beyond the owner’s control, he is absolved of liability. Since he fulfilled his responsibilities, and the damage occurred due to circumstances which he could not have foreseen or prevented, he is exempt.

 A number of *Acharonim* addressed the question as to the precise Biblical source of this obligation. Where does the Torah introduce a requirement to take reasonable measures to prevent one’s possessions from causing damage? While we intuitively understand the importance of this requirement, where it is mentioned in the Torah?

 The *Chatam Sofer* (Y.D. 241) suggested that this obligation falls under the command of “*lo ta’amod al dam rei’ekha*” (Vayikra 19:16), which requires assisting somebody who faces danger. The classic case discussed by *Chazal* (Sanhedrin 74a) is when one’s fellow is drowning, and the person is in a position to rescue him. The command of “*lo ta’amod al dam rei’ekha*” forbids remaining idle in such a case, and requires one to do what he can to rescue his fellow from danger. This obligation, the *Chatam Sofer* contends, also includes taking proactive measures to ensure not to endanger other people through unsafe conduct or by allowing one’s possessions to cause harm.

 The *Chatam Sofer* seems to have understood that if the Torah requires us to rescue somebody who faces danger even though we are not at all at fault for his dire situation, then certainly we must not place him in a situation of danger – either physical or financial. To that end, we are required to handle our possessions in such a way that they do not cause harm to other people or their possessions.

 However, [Rav Asher Weiss](http://www.torahbase.org/%D7%A0%D7%96%D7%A7%D7%99-%D7%9E%D7%9E%D7%95%D7%9F-%D7%AA%D7%A9%D7%A0%D7%98/) questions this approach, noting that it fails to explain the specific obligation one bears with respect to his own property. If the requirement of *shemirat mamono* – protecting against harm caused by one’s possessions – stems from the general obligation to save others from harm, then why is it limited to one’s own possessions? Even if we assume that “*lo ta’amod al dam rei’akha*” includes actively working to ensure public safety, then why do people bear a specific requirement with respect to their own possessions? Seemingly, we should be required to protect people from all harm, even from the harm posed by other people’s possessions.

 The answer, perhaps, is that while this fundamentally is correct, and in principle we are to prevent all hazards of any kind, even those posed by others, in practice, the requirement of *shemirat mamono* has to be restricted to one’s own possessions. It is clearly impractical to expect all people to prevent all hazards. The most feasible way for the Torah to practically apply the obligation to maintain safety is to demand that every person act safely and prevent his possessions from causing harm. Of course, if we see somebody else’s animal threatening another person, and we are in a position to help, the command of “*lo ta’amod al dam rei’ekha*” requires us to intervene. But when it comes to restraining animals to prevent them from causing harm, this prohibition requires each person to control his own possessions.

Tuesday

 The famous first Mishna of Masekhet Bava Kama delineates the basic categories of *nizkei mamon* – damages caused by one’s possessions for which he is liable to compensate the victim. These categories are: 1) *keren* – damages caused when one’s animal acts in an uncharacteristically violent manner; 2) *shein ve-regel* – damages caused when one’s animal acts in a normal fashion, such as by eating or trampling upon people’s property; 3) *eish* – damages caused when an ordinary gust of wind blows a person’s object that had been left exposed, such as fire that spreads; 4) *bor* – damages caused when one places a hazard in a public place, such as by digging a ditch. All these situations of liability are briefly discussed by the Torah, in Parashat Mishpatim.

 The Gemara (Bava Kama 5b) observes that the Torah did not, at first glance, need to specify all these cases of damages. If the Torah had introduced only the liability for *bor* and one of the other three, we could have then inferred the remaining two through logical deduction. (See Rashi *s.v. ve-khulhu* for an explanation of this process of logical deduction.) However, the Torah found it necessary to enumerate all four cases of damages because each has a unique halakhic feature that it does not share with the others. Namely, in a case of *keren*, the owner needs to pay only half the value of the damages, unless the animal has established a pattern of violent behavior. In a case of *shein ve-regel*, the owner is not liable if the damages occurred in a public area (as people should not leave their belongings unattended in public places). *Eish* liability does not extend to *tamun* – objects that were concealed when they damaged. And liability for *bor* is incurred only for damages caused to animals, but not to damages caused to people or utensils. Accordingly, the Torah needed to specify each category of damages, because each has a unique halakhic feature. Otherwise, there would not have been any need to establish all four categories, as we could have inferred the final two categories through the process of logical deduction. This is indicated already by the opening Mishna of Masekhet Bava Kama, which notes the “*tzad ha-shaveh*” – the common denominator – between the four categories of *nezikin*. This observation suggests that in principle, the Torah did not need to specify all four categories, as at least some could have been inferred through logical deduction, based on their shared characteristics.

 *Tosefot* (2a, *s.v. ve-lo*) note that the Mishna and Gemara work off the assumption that “*oneshim mamon min ha-din*” – we can impose financial liability based on logical deduction. When it comes to court-administered punishment – *malkot* (whipping) and execution – there is a fundamental rule that “*ein oneshim min ha-din*” – punishment can be administered only if the Torah directly forbids the prohibited act in question. Although *Chazal* were authorized to apply a Torah prohibition beyond its immediate context through the various logical tools at their disposal (such as “*kal va-chomer*”), *Beit Din* does not punish violators who transgress a law established through logical extension. *Tosefot* here observe that the Mishna appears to distinguish in this regard between corporal punishment and execution, on the one hand, and financial liability, on the other. Apparently, while *Beit Din* cannot physically punish violators who transgress a law established through logical deduction, financial liability can be imposed on the basis of logical deduction.

*Tosefot* suggest that this matter is subject to a debate among the *Tanna’im*. Whereas the opening Mishna of Bava Kama, as discussed, seems to maintain that financial liability can be established on the basis of logical deduction, the *Mekhilta* states, “*Ein oneshin mamon min ha-din*” – ruling out the possibility of forcing a defendant to pay based on a law established through logical deduction. The *Mekhilta* infers this principle from the Torah’s formulation in introducing the liability for *bor*: “If a person opens a pit, or if a person digs a pit…” (21:33). At first glance, the *Mekhilta* comments, there seems to be no reason for the Torah to mention both scenarios – where one opens a ditch that had earlier been dug and then covered, and where one digs a new ditch. The fact that the Torah found it necessary to mention both situations, the *Mekhilta* comments, proves that we cannot apply financial liabilities from one case to another based on logical reasoning. The Torah needed to specify *bor* liability in both these cases because we cannot extend liability on our own.

*Tosefot* assert that the Mishna, which clearly does not accept the *Mekhilta*’s position, likely follows a different explanation for why the Torah specifies both instances of *bor*. The Gemara (Bava Kama 49b) understands the extra phrase “or if a person digs a pit” as alluding to the fact that in a case of *bor*, one bears liability only for creating the hazard, and not because the damage was caused by his property. As such, liability is imposed when one creates a hazard in a public property, despite the fact that the person does not own the ditch or obstacle. The Gemara clearly does not accept the *Mekhilta*’s reading of the verse, and *Tosefot* therefore conclude that different views exist with regard to the rule of “*ein oneshin mamon min ha-din*.”

Wednesday

 Yesterday, we noted the rule inferred by the *Mekhilta* in Parashat Mishpatim that “*ein oneshim mamon min ha-din*” – *Halakha* cannot impose a payment requirement upon a litigant based on an argument of logical deduction. The *Mekhilta* arrives at this conclusion from the fact that the Torah had to specify two cases in which one who creates a hazard in a public area is liable for damages it causes – one who digs a ditch, and one who uncovers a preexisting ditch that had been covered (21:33). Although these two cases are very similar, nevertheless, the Torah had to specify both cases because we cannot, based on our own logic, extend the Torah’s liabilities beyond the specific context in which they were stated. As we saw, *Tosefot* in Bava Kama (2a) noted that the first Mishna in the *masekhet* (as well as the Gemara, 5b) disagreed, and maintained that the oral halakhic tradition can, in fact, extend liabilities through logical deduction. Indeed, the situations of *nezikin* (damages) discussed by the Torah in Parashat Mishpatim are viewed as paradigms of damage liability that apply in all similar situations.

 As we saw, financial liability differs this in respect from *malkot* (whipping) and execution. When it comes to physical punishment, *Halakha* does not authorize *Beit Din* to punish sinners for transgressing prohibitions established through logical deduction. The question then arises as to the reason underlying this distinction. Why can financial liability be established based on logical deduction, but not court-administered punishment?

 Rav Yehuda Leib Ginsburg, in his [*Musar Ha-mishna* (Bava Kama 1:1)](http://hebrewbooks.org/pdfpager.aspx?req=41733&st=&pgnum=5), explains that when it comes to *malkot* and execution, we cannot determine based on logical deduction for which violations God required punishments. In His infinite wisdom, He stipulated in the Torah certain punishments to atone for very specific sins, for reasons we can only speculate, and we are not authorized to apply them beyond these contexts. When it comes to financial liability, however, once the Sages determined, based on the logical tools at their disposal, that liability stated in one case applies in another, there is no reason to deprive the plaintiff of the money owed to him. If the Torah explicitly imposes liability in one case, then the Sages are authorized to apply it in a similar case – as long as there is no compelling difference between the two – because we can assume that the victim in the second case is no less entitled to compensation than the victim in the first case. As opposed to *malkot* and execution, which relate to God’s “personal” retribution against a sinner, financial liability is necessary to compensate people who have incurred a loss or stand to incur a loss. *Halakha* cannot discriminate between one victim and another; if the Torah awards compensation to a litigant in one case, and *Halakha* can establish that the rationale applies in a similar case, then the litigant in that similar case deserves compensation. As such, according to the accepted position, liability can be extended based on logical deduction.

Thursday

 The Torah in Parashat Mishpatim (22:1) introduces the law of “*ba be-machteret*,” which applies in the case of an intruder who is confronted by the homeowner. In such a case, the owner is permitted to kill the intruder, as there is good reason to believe that the intruder broke into the home knowing full well that he would be confronted by the owner, and is prepared to kill him. As such, every situation of intrusion is treated as life-threatening, and the homeowner may thus kill the intruder to protect himself.

 However, the Gemara, in Masekhet Sanhedrin (72b), draws a distinction in this regard between different types of intrusions. The Torah speaks specifically of a “*ba be-machteret*” – a burglar who digs an underground tunnel into the intended victim’s home. The Gemara comments that if the intruder comes in through less laborious means, such as through a door or window, the homeowner does not have the right to kill him unless he first warns the burglar that he would kill him if he does not leave. The reason, as Rashi explains, is that in such a case, we cannot assume that the burglar intends to kill the homeowner. It is very possible that he found an open door or window and figured he could attempt a burglary and then flee if he is noticed. If, however, the burglar went through the trouble of digging an underground passageway into the home, we may assume that he is committed to burglarizing the home at all costs, even if this requires murder.

 Underlying the Gemara’s ruling is a concept that applies to virtue as much as it applies to crime: the sign of firm commitment and resolve is hard work. If a person is not truly committed to a certain cause, then he might participate when he finds an “open window,” if he sees a convenient, risk-free opportunity. But if one is passionately devoted to a goal, he is prepared to “dig” and do what is necessary to achieve it. Even when the “windows” are “locked,” when there is no easy path to the goal, he invests the effort needed to get there.

 We will never achieve excellence in our religious observance if we only enter through the open windows, if we take on only that which is easy and convenient. Certainly, plenty of “windows” will open before us over the course of our lives; we will occasionally encounter *mitzva* opportunities that present themselves and are available without too much exertion on our part, and we are obliged to seize every such opportunity. But just as importantly, we need to be prepared to “dig.” The goal of religious achievement, like the situation of a “*ba be-machteret*,” demands unconditional commitment and dedicated, consistent effort. Rather than waiting to notice an “open window,” we are to pursue spiritual excellence even if this necessitates “digging” and investing a great deal of time and energy.

Friday

 The Torah in Parashat Mishpatim (22:21) introduces the prohibition against causing distress to widows and orphans: “*Kol almana ve-yatom lo te’anun*.” Rashi, citing the *Mekhilta*, clarifies that this prohibition in fact applies not only to widows and orphans, but to all people. The Torah here forbids causing people distress, and it mentions the specific cases of widows and orphans because they are generally more vulnerable and thus more easily taken advantage of.

 The *Mekhilta* also observes that the Torah uses the seemingly redundant expression “*anei te’aneh*” in discussing this prohibition, and it explains that these two terms refer to “*inui merubeh*” and “*inui mu’at*.” Meaning, the Torah forbids causing “great” distress as well as “minor” distress.

 To illustrate this point, the *Mekhilta* tells the tragic story of Rabbi Shimon ben Gamliel and Rabbi Yishmael Kohen Gadol, who were being led by the Roman authorities to their execution. Rabbi Shimon wondered what transgression he might have violated for which he deserved this fate, and Rabbi Yishmael asked him if perhaps he ever made somebody who approached him with a question wait until he finished drinking, putting on his shoes or donning his cloak. Rabbi Yishmael noted that the Torah warns of grave punishment even for “*inui mu’at*” – causing people slight distress – and thus rabbis, who are often approached with questions, are prone to transgressing this prohibition if they make people wait unnecessarily. As such, Rabbi Yishmael suggested that although Rabbi Shimon was truly righteous, it was possible that he fell prey to this common pitfall of rabbinic service, inconveniencing those who come for guidance.

 This story is striking on several levels, but perhaps most importantly, it teaches us of the care we must take not to unnecessarily cause other people even minor inconveniences. *Chazal* here warn that even making people wait a few moments for no valid reason violates, on some level, the prohibition of “*lo te’anun*.” If we are the cause of people’s lives becoming a bit more difficult or complicated, and we could have avoided this consequence, then we are guilty of this prohibition.

 One unfortunately common example of this form of “distress” is showing up late to meetings and appointments. Of course, often this happens due to circumstances that were unforeseen or beyond our control, or an understandable miscalculation of the amount of travel time needed. But there are also situations when we arrive late simply due to negligence, because we did not take the trouble to plan properly. *Chazal* teach that the Torah’s frightening warning in Parashat Mishpatim of the grave consequences of causing distress to widows and orphans can apply even to causing any person minor inconvenience. While mistakes are bound to happen and many situations lie beyond our control, we must try to pay close attention to all our interpersonal affairs to ensure, as much as reasonably possible, that people are not unnecessarily inconvenienced on our account.