YESHIVAT HAR ETZION

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**STUDENT SUMMARIES OF SICHOT OF THE ROSHEI YESHIVA**

**Sicha of HarAV Baruch gigi**

**Parashat Mishpatim**

**“Now These Are the Laws that You Shall Set”**

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Translated by David Strauss

**Introduction**

And these are the laws that you shall set before them. (*Shemot* 21:1)

In our *parasha*, after the momentous revelation at Mount Sinai with shofar and lightning, the Torah is free to outline the laws according to which the people of Israel will conduct their daily lives. The decision to open with monetary laws is interesting: of all the various areas of Halakha, the Torah opts to open with the laws governing bailees, loans, and torts. What stands behind this choice?

**He Who Wishes to Become Wise Should Occupy Himself with Monetary Laws**

Before we begin to answer this question, let us turn to the last *mishna* in tractate *Bava Batra*, which also ascribes great importance to monetary laws:

[If the guarantee and signature of] a guarantor appear below the signatures to bills of indebtedness, [the creditor] may recover [his debt] from [the guarantor's] free property. Such a case once came before Rabbi Yishmael, who decided that [the debt may] be recovered from [the guarantor's] free property. Ben Nanus said to him: The debt may be recovered neither from sold property nor from free property. He said to him: Why? The other said to him: This is just as if [a creditor] were [in the act of] throttling a debtor in the street, and his friend found him and said to him: "Leave him alone [and I will pay you]” – he would [certainly] be exempt [from liability], since the loan was not made through trust in him. But what manner of guarantor, however, is liable [to refund a debt]? [If the guarantor said:] Lend him [a sum of money] and I will repay [it] to you, he is liable, since the loan was made through trust in him.

Rabbi Yishmael said: He who would be wise should engage in the study of monetary laws, for there is no greater discipline in the Torah than they, and they are like a welling fountain. And he that would engage in the study of monetary laws, let him wait upon Shimon ben Nanus. (Mishna *Bava Batra* 10:8)

Fundamentally, a person can accept upon himself to be a guarantor for a debt only before the loan and the signing, not afterwards. Rabbi Yishmael and Shimon ben Nanus disagree regarding whether or not it is nevertheless possible that a guarantor’s signature could appear below the signatures to the bill of indebtedness.

After presenting the dispute and the discussion about it, Rabbi Yishmael notes that: "He who would be wise should engage in the study of monetary laws." Rabbi Yishmael realized the special importance of monetary laws and their unique impact on human lives.

It is possible to understand the words of Rabbi Yishmael on a basic level and explain that monetary laws are especially complicated. Complex engagement with their details and minutiae will, over time, develop a person's mind and make him wiser.

Such an explanation, however, is unsatisfying. First, the rest of the Torah is also complicated. Furthermore, in my opinion, Rabbi Yishmael's words contain additional depth, as will be seen through analysis of two unique elements that characterize monetary laws.

**Monetary Laws – Laws of Life**

The Torah offers detailed statements regarding all different areas of life, and it also creates new worlds that are also open to analysis and discussion. For example, the Torah introduces the world of sacrifices, and now we can – and are expected to – learn the laws of slaughter, sprinkling the blood, and the various disqualifications in sacrificial service. Another example is in the laws of marital relations, which include marriage and divorce: "A woman is acquired in three ways," and the Torah goes on to spell out in detail the various obligations that a man has toward his wife.

In several places, *Chazal* address the case of one who "stipulates about something that is written in the Torah" (see, for example, Mishna *Ketubot* 9a, and elsewhere). For example, can a man betroth a woman on condition that he not become liable for her maintenance, clothing, and conjugal relations? The answer is that one cannot make such a stipulation, and the betrothal is valid whether or not the condition is fulfilled. The underlying logic is clear: Once the Torah established a closed system of laws, a person cannot shape or change them as he pleases.

Monetary laws, however, are different. In the Gemara in *Kiddushin* (19b), for example, Rabbi Yehuda says that even though a person cannot add a stipulation to what is written in the Torah, "in a monetary matter, his stipulation is valid." The Torah defined certain monetary laws in great detail, such as the laws of bailees – yet the Ramban (*Bava Metzia* 94a) explains that a person can stipulate to become a bailee with his own unique laws.

For some reason, in the world of monetary affairs, the law that "whoever stipulates about something that is written in the Torah, his condition is invalid," does not apply. According to the Ramban, the logic behind this distinction is related to the unique way monetary laws are integrated into our lives. The monetary laws constitute a crossroads where the laws and values of the Torah meet with the mind of man.

Monetary laws, then, are different from all other laws established in the Torah. As noted, the Torah usually institutes a closed system and describes its details. In contrast, when it comes to the world of monetary matters, the Torah attaches itself to an existing framework – for there were monetary laws even before the giving of the Torah.

However, though it is possible to deviate from the rules given by the Torah, the Torah still includes a large and important portion devoted to monetary laws. Why? The answer is simple: Once the Torah was given, the monetary laws received a special character, that they did not have before. The Torah added different values to the legal system of monetary laws, in an attempt to reshape the framework of relationships between human beings.

Returning to the controversy between Rabbi Yishmael and Shimon ben Nanus about whether a guarantor's signature can ever appear below the signatures of the witnesses to a bill of indebtedness, perhaps the dispute relates to this question: To what extent can a person influence the law? Can his desire alone grant him the status of a guarantor? While fundamentally the laws of the Torah are set in stone, there is room to say that in monetary manners, a person's desires, considered alongside additional values, can impact the law.

To conclude this point, consider what the Ramban says about this well-known verse in *Parashat Va-etchanan*:

And you shall do that which is right and good in the sight of the Lord; that it may be well with you, and that you may go in and possess the good land which the Lord swore to your fathers. (*Devarim* 6:18)

What is the meaning of the Torah's commandment to do that which is "right and good"? The Ramban explains that this is a general commandment, according to which a person must keep the Torah in the world of monetary matters even in cases where there is no explicit commandment. The world of monetary matters must reflect a system of values. A person must identify with this system even when the Torah does not impose a particular obligation. The great uniqueness of the world of the Torah's ordinances lies in the fact that it is precisely in the details of the monetary laws of bailees, loans, and torts that one can find an entire system of values and principles.

**Equitable Society**

Another principle that emerges from *Parashat Mishpatim* is the Torah's aspiration toward an egalitarian social structure. Human society has been hierarchical throughout most of history, with clear class divisions. It seems that in our *parasha*, the Torah contends with this reality and tries to uproot it:

If you buy a Hebrew servant, six years he shall serve; and in the seventh he shall go out free for nothing. (*Shemot* 21:2)

The first commandment with which the *parasha* opens is the obligation to free a Hebrew slave. With this commandment, the Torah essentially tries to remove slavery from the world, and to raise the banner of freedom to which every human being is entitled. The people of Israel left Egypt not to be slaves to masters of flesh and blood, but to worship God and be enslaved to Him alone.

The next section deals with a Hebrew maidservant and expresses the same principle: a man may not acquire a maidservant exclusively so that she will serve him; rather, he must designate her for marriage. The Gemara in the first chapter of *Kiddushin* (primarily on pp. 18-21) emphasizes that from the outset, the acquisition of a maidservant was on condition that he marry her in the future. Therefore, if the master decides one day that he does not want to take the maidservant as his wife, he must release her immediately.

Based on the above, we can understand the novel position of Rav in tractate *Bava Metzia* (10a), that a worker can renege on an agreement with his employer and quit "even in the middle of the day." That is to say, despite the agreement entered into between the employer and the employee, the latter retains the right to terminate his employment at any given moment. With this law as well, the Torah emphasizes that every Jew is free to determine his own destiny. Therefore, even the appearance that a person is enslaved to his fellow is forbidden, for the people of Israel are slaves to God alone.

Even today there is slavery, albeit of a different kind – slavery into which people enter voluntarily, with no awareness of the fact that they are slaves. People choose senior "high-tech" positions, or glittering law firm jobs, and in return they mortgage their personal lives. Those workers are willing to give up their free time and their freedom to disconnect from work, in exchange for the comfortable conditions they are given at work. In return, these employees are expected to be available twenty-four hours a day, three hundred and sixty-five days a year, without being able to choose to take a single moment to invest in their family and themselves. Modern slavery, despite its gleaming appearance, is still slavery.

**Conclusion**

In some years, *Parashat Shekalim,* the first of the four special readings before and after Purim, is appended to *Parashat Mishpatim.* It seems that this linkage is not by chance; rather, there is a substantive connection between the two portions*. Parashat Shekalim* takes the first step toward the egalitarian freedom promoted by *Parashat Mishphatim.* Every individual brings the same half-shekel, whether he is rich or poor. This, however, is only the first step; we must take the second step ourselves, by choosing the right profession and the correct prioritization of the values by which we will live our lives. As *Chazal* said:

A favorite saying of the Rabbis of Yavneh was: I am God's creature and my fellow is God's creature. My work is in the town and his work is in the country. I rise early for my work and he rises early for his work. Just as he does not presume to do my work, so I do not presume to do his work. Will you say, I do much and he does little? We have learned: One may do much or one may do little; it is all one, provided he directs his heart to heaven. (*Berakhot* 17a)

[This *sicha* was delivered on Shabbat *Parashat Mishpatim* 5780.]