

MESHECH CHOCHMAH

Parshas Mishpatim

Between Parshas Mishpatim and Maseches Bava Kama

וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשִׂים לִפְנֵיהֶם

And these are the laws that you shall place before them (21:1)

The Parsha of Mishpatim introduces us to the world of mitzvos *bein adam lechaveiro* (between man and man), including many of the laws of damages and injury. These halachos are expounded using the principles of *midrash halachah* and elucidated in *Maseches Bava Kama* in great detail, to the extent that one might well conclude that any meaningful halachic discussion of these topics would have to take place exclusively within the context of those sections of Gemara. However, as the Meshech Chochmah demonstrates, there is much in the careful study of the *pesukim* on a *pshat* level which can contribute to our understanding both of these mitzvos and of the Gemara's discussions themselves.

PSHUTO SHEL MIKRA CORROBORATING THE HALACHAH: TWO TYPES OF BOR

One of the four *avos nezikin* (primary forms of damage) discussed in our parsha is *bor* – a pit. The *pesukim* read:¹

וְכִי יִפְתַּח אִישׁ בּוֹר אֹךְ כִּי יַכְרֶה אִישׁ בַּר וְלֹא יִכְסֶּנּוּ וְנִפְּלָ שָׂמָה שׁוֹר אֹךְ חֲמֹר. בְּעַל הַבּוֹר יִשְׁלַם
כֶּסֶף וְיָשִׁיב לַבְּעָלָיו וְהָיָה לוֹ.

If a man shall uncover a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall into it. The owner of the pit shall make restitution, he shall return money to its owner, and the carcass shall be his.

By mentioning that “*the carcass shall be his*,” the Torah is clearly indicating that we are dealing with a case where the ox that fell into the pit died as a result. Now, in the

¹ *Shemos 21:33-34.*

beginning of *Bava Kama*,² the Gemara discusses the categories of “*av*” and “*toldah*” with regards to *nezikin*. An *av* is defined as a form of damage which is mentioned in the *pasuk*, while a *toldah* is something which is derived therefrom. With regards to the damage caused by a pit, the Gemara there states that both a pit which is deep enough to kill an animal that falls into it, as well as a pit which is deep enough only to cause injury, are classified as *avos nezikin*. Having seen the relevant *pesukim*, this statement seems very difficult to understand.

How can the Gemara state that a case where the pit causes injury is also referred to by the *pasuk* when it explicitly states that the ox died?

The Meshech Chochmah explains. If we look carefully at these two *pesukim*, we will notice something unusual. In all other cases described in our Parsha where death occurs, this is mentioned *at the time that it happens*. For example, *pasuk 35* reads:

וְכִי יִנָּף שׁוֹר אִישׁ אֶת שׁוֹר רֵעֵהוּ וּמָת וּמָכְרוּ אֶת הַשׁוֹר הַחַי וְהָצוּ אֶת כַּסְפּוֹ וְגַם אֶת הַמֵּת יִחְצִיּוּ.

If a man's ox³ shall strike his fellow's ox and it dies, they shall sell the living ox and divide its money, and the carcass, too, they shall divide.

Looking again at the *pesukim* dealing with *bor*, we notice that there is no mention in the first *pasuk* of the ox dying when it falls in! It is only in the second *pasuk* we discuss what happens with the carcass, thereby giving us to understand that the animal died. Why would the Torah not mention this in the first *pasuk*, as it does with all similar cases?

Rather, says the Meshech Chochmah, the Torah deliberately omitted any reference to the ox dying in the first *pasuk* in order to indicate that *bor* is not restricted to a case of death, but rather, relates to injury as well, as the Gemara stated.

THE OTHER SIDE OF BOR

A further example within the topic of *bor* relates to the opinion of Shmuel in the Gemara,⁴ that the basis for liability in a case of *bor* is the impact which causes the damage or death to the animal.⁵ Further on,⁶ the Gemara elaborates that a corollary of this approach is that if an animal stumbles on the edge of a pit and, as a result, does not even land in the pit itself, but rather goes flying and crashes to the ground on the other side of the pit, the owner of the pit is liable for any damage caused by that impact. In this instance, it is sufficient that the pit was the cause of impact for the owner to be liable, even though the impact occurred outside of the pit.

2 3a.

3 Referring to a *tam* (an ox who has not yet gored three times) who pays only half damages, as the *pasuk* proceeds to outline.

4 *Bava Kama 50b*.

5 This is as opposed to the opinion of Rav (*Bava Kama ibid.*) who maintains that the basis of the liability is the foul air which collects in the pit and which contributes to the damage.

6 *Ibid.* 52b.

Here, too, the Meshech Chochmah directs our attention to the specific way the Torah presents this case, showing how it bears out Shmuel's opinion in the Gemara. The pasuk describes the damage done by the pit with the words, "וְנָפַל שָׁמָּה שׂוֹר אוֹ חֲמוֹר." These words literally translate as, "and an ox or donkey shall fall *there*." Seemingly, the more precise way to describe this case would be "וְנָפַל בּוֹ – and it shall fall *in it*," or "וְנָפַל בְּתוֹכוֹ – and it shall fall *into it*"! Why does the pasuk refer to the place the ox falls as "there"?

Rather, we see from this term that the ox does not actually need to fall into the pit in order for the owner to be liable. It is sufficient for the pit to cause it to fall "there," in that area, even if the animal lands outside the pit, as per Shmuel!

PSHUTO SHEL MIKRA ACCOMPANYING THE HALACHAH: THE MEANING OF "LE'OLAM"

In the two examples mentioned above, the *pshat* served to further establish the halachic statements found in Chazal. There are, times, however, when the *pshat* appears quite different than – and even contrary to – the halachah as expounded through midrash. An example of this can be found in the beginning of our Parsha, dealing with the *eved ivri* – Hebrew servant. The standard term of service for *eved ivri* is six years. If, at the end of that term, he does not wish to go free, the Torah states:⁷

וְהִגִּישׁוּ אֵל הַדֶּלֶת אוֹ אֶל הַמְּזוּזָה וְרָצַע אֶדְנָיו אֶת אָזְנוֹ בַּמַּרְצֵעַ וְעָבְדוּ לְעֹלָם.

(His master) shall bring him to the door or to the doorpost, and his master shall bore through his ear with the awl, and he shall serve him forever.

The simple meaning of the word "*le'olam*" is that the *eved ivri* now serves his master literally for the rest of his life. However, as we know, this is not the halachah. Rather, an *eved nirtza*⁸ serves his master until the Yovel year and then goes free. Here, too, the halachah is expounded through the principles of midrash halachah.⁹ The question is: where does this leave the word "*le'olam*", whose *pshat* meaning certainly seems to imply that he needs to serve his master as long as he lives – even beyond the Yovel year?

Here, too, the Meshech Chochmah demonstrates that not only is the *pshat* of the *pasuk* not in conflict with the halachah, it is actually part of it!

We may be inclined to understand the halachah for the *eved nirtza* as essentially saying that, from the outset, his extended term of servitude only continues until the Yovel year. This means that when the Torah says to "proclaim freedom" in the Yovel year,¹⁰ it is purely to let servants know that their term of servitude is up. However, referring to the words of certain Rishonim,¹¹ the Meshech Chochmah explains that in fact the *eved nirtza's*

7 21:6.

8 The term for an *eved ivri* who has had his ear pierced, having expressed his desire to stay on past the sixth year.

9 As detailed in *Rashi's* comment to the above pasuk.

10 *Vayikra* 25:10.

11 *Tosafos Arachin* 33a s.v. *ela*, *Ramban Gittin* 36a s.v. *ha d'tanya*.

servitude is *permanent*, as the pasuk states explicitly, except that the Yovel year then *releases him* from his servitude. According to this approach, the role of the Yovel year is not just to **inform** the *eved* that he is free, it is to **set him free!**

The halachic implications of this approach would relate to the case of an *eved* who chose to stay on past the sixth year, during which time the Yovel year became discontinued.¹² That *eved* would then remain in servitude permanently. Since his servitude is, in principle, permanent, in the absence of the Yovel year to discontinue it, it would continue as long as he lives, as the pasuk states: “וְעַבְדוֹ לְעַלְמִים” – *ki’pshuto!*

Thus, although the *pshat* in our pasuk will not generally express itself as practical halachah, nonetheless, it plays an integral role in expressing how the halachah itself works, with the full understanding of this matter emerging from the *pshat* and *drash* together.

12 Historically, this occurred when Sancheriv exiled the two tribes of Reuven and Gad and the half tribe of Menashe, at which time all twelve tribes ceased to be represented in the Land of Israel, which is a prerequisite for the Yovel year to operate, see Rambam, *Hilchos Shemita v’Yovel 10:8*.