

Zera Shimshon

Profound Divrei Torah culled from the writings of the Gaon and Mekubal Rav Shimshon Chaim ben Rav Nachman Michael Nachmeni zy"l, author of Sefer Zera Shimshon on Chumash and Toldos Shimshon on Pirkei Avos, who promised that all who study his words will be blessed with an abundance of good, wealth and honor, and will merit to see children and grandchildren thriving around their table.



תשפ"א Mishpatim

• Zera Shimshon - the Limud that brings Yeshuos •

עליון 124

אמרות שמשון

The Virtue of Settling in Court Through the Means of Compromise

וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תָּשִׂים לִפְנֵיהֶם: (כא א)

And these are the laws that you shall place before them.

The Midrash (ל טו) cites this Passuk and then expounds on it by quoting King David's words in Tehillim. טהור ה' יראת ה' טהורה. ואלה המשפטים. דוד אמר יראת ה' טהורה. 'And these are the laws': David said 'The fear of Hashem is pure and enduring forever'.

It seems that the Midrash found some difficulty in the words of the Passuk, ואלה המשפטים - *And these are the laws*, and quoted David's words in order to resolve that difficulty. Hence, we need to understand what difficulty the Midrash found with the words of the Passuk.



Rashi establishes that any time the Torah says ואלה - *And these*, it is an indication to some comparison between the latter group and the former. Rashi therefore asks why the Torah says ואלה המשפטים - *And these are the laws*; what comparison is the Torah generating between these laws and the Ten Commandments, which was the subject discussed above. Rashi answers that the Torah's comparison is an implication that just as the Ten Commandments were given at Sinai, so too were these laws given at Sinai. We can, however, raise the following question on Rashi's answer; why would the Torah need to allude to this most obvious fact that these laws also were given at Sinai? Why would anyone think otherwise?

We can answer as follows. The Gemara in Sanhedrin (נ טו) discusses the virtue of settling a case by means of compromise, over using the strict measure of judgment. R' Yehoshua ben Korah says: *It is meritorious for a judge to compromise. As it is stated, 'Execute truth, and judgement of peace, in your gates'. What is meant by 'judgement of peace'; for where there is judgement there is no peace, and where there is peace there is no judgement?* [i.e. Judgment implies strict application of the law, which in most cases means that the court rules in favor of one litigant and against the other. When this occurs, peace is unlikely to prevail.] *What then is the 'judgement of peace' that the Passuk is referring to? I would say that this is compromise.* Hence, this Passuk clearly advocates the settlement of disputes by means of a compromise.

In this vein the Maharsha writes that not only is it commendable to settle a litigation by means of compromise, moreover, one who fears Heaven will never deviate from settling through compromise. The reason being, because when rendering judgment through the strict

letter of the law, the one who was deemed guilty will naturally not accept the verdict willingly, and therefore, on the chance that the judge made a mistake and pronounced the innocent party to be guilty, he would, albeit unbeknownst to him, be obligated to compensate the one whom he had mistakenly found to be guilty. But when settling through compromise - because it is an agreed upon settlement by both litigants - there is no risk of the judge being obligated to compensate any of the parties.

However, because the ideal approach to the settlement of any contention between two parties is through the method of 'compromise', it must be that the method of compromise would somehow be alluded to in the Passuk that presents the Jewish judicial system. In light of this we need to explain that when the Torah commands '*these are the laws that should be placed before them*', but doesn't say '*these are the laws with which you should judge them*', it is a clear indication that although these laws should indeed be taught and given over to the Jewish People, nevertheless, ideally, they should not be used to judge with, rather the preferred method of judgment should be through compromise.

In view of this we can understand Rashi's answer. Because one might have believed that the preferred method of judgement is by means of the strict letter of law, while the method of compromise is inferior, therefore when the Torah says, ואלה המשפטים אשר תשים לפניהם - *And these are the laws that you shall place before them*, which alludes to the method of compromise and its superiority, the Torah must simultaneously also clearly imply that this method of compromise was also given over at Sinai, and is not inferior at all.



In light of this, we can explain that what the Midrash found difficult with the words ואלה המשפטים - *And these are the laws*, is as follows. How can the Torah say ואלה המשפטים - *And these are the laws*, which is a clear allusion to the strict letter of the law, while at the very same time also allude to the method of compromise?

And it was to answer this difficulty that the Midrash quoted the Passuk in which David said, צדקו, אמת, משפטי ה' - *The fear of Hashem is pure and enduring forever; the Judgements of Hashem are true; they righteously stand in unison.* In this Passuk David tells us that '*The fear of Hashem*' - which the Maharsha writes supports the method of compromise - and '*the Judgment of Hashem*' - which clearly promotes settling through the strict letter of judgement - '*righteously stand in unison*'. This clearly demonstrates that one can compromise in a manner which is close to the strict letter of judgment, and thus the method of compromise and the strict letter of judgment can indeed stand in unison. Accordingly, the Passuk which promotes the strict method of the law, can at the same time also allude to the preferred method of compromise.

זרע שמשון פרשתנו אות ב

When Bribery Only Blinds the Judge From His Extra Measure of Insight

וְשָׁחַד לֹא תִקַּח כִּי הַשְׁחָד יַעֲוֶה עֵינֵי חֲכָמִים וְיִסְלַף דְּבָרֵי צְדִיקִים: (כג ה)

A bribe you shall not take, for the bribe will blind those who are insightful and will make crooked the words of the righteous.

The Torah teaches us this very lesson once again in Parshas Shoftim (דברים ט"ז) when it says, 'You shall not take a bribe, for the bribe will blind the eyes of the wise and will make crooked the words of the righteous. Although the Torah writes this same prohibition a second time, nevertheless, there are two clear differences in its wording.

The first difference is that in our Parsha, the Passuk says, 'A bribe you shall not take', while in Parshas Shoftim it says, 'You shall not take a bribe'. Secondly, in our Parsha it states, 'for the bribe will blind those who are insightful', while in the other Passuk it states, 'for the bribe will blind the eyes of the wise'. What is the meaning behind these two differences?

The Gemara in Kesubos (ק"ה ע"א) recounts the following. Karna would take an *istira* [a coin worth half a zuz] from the non-liable party and an *istira* from the liable party, and then judge the law for them [i.e. he would take an *istira* from both of the litigants, whom he would later declare one to be non-liable and one to be liable]. **How** was Karna allowed to do this, if it is written, 'And a bribe you shall not take'?... [i.e. since Karna took payment from the litigants themselves, it constituted a forbidden bribe]. **Since** Karna took compensation from both of them, he would not come to corrupt the law [i.e. for there was no sole litigant who found favor in his eyes, for they both paid him equally]. **But** even a judge who does not come to corrupt the law by taking compensation, isn't he nevertheless prohibited from taking compensation, for the Torah states 'And a bribe you shall not take'? **These** words stated in the Passuk only apply to a judge who took compensation in the form of a bribe, whereas Karna took it in the form of payment. **But** even a judge who takes compensation in the form of payment, isn't he nevertheless prohibited from taking it, for we learned in the Mishnah, 'If one takes a fee for judging, his decisions are void'? **These** words stated in the Mishnah only apply to compensation for judging the case, whereas Karna would take compensation for being unemployed from his work for the duration of the proceedings. **But** isn't compensation even for unemployment not

praiseworthy, for we learned in the Baraisa, 'Despicable is the judge who takes payment to judge, however the judgment that he renders is valid'? [This principle cannot be referring to one who takes payment for judging the case, for then his judgment would be void. Rather, it must be referring to a judge who takes compensation for unemployment, and nevertheless it is despicable to do so]. **These** words of the Baraisa apply only where the judge's unemployment is not evident, whereas Karna took compensation for unemployment which was evident.

In summary: It is prohibited to accept a bribe in any form, whether from one litigant with the intent to favor the donor, or from both litigants without any intent of favoring them. Furthermore, it is even

prohibited to take payment for pronouncing a judgement. Taking compensation in any of these three forms, renders the judgement void. It is, however, permitted to take compensation for the loss of employment. Nevertheless, if it isn't evident that the payment is compensation for unemployment, it is despicable to take the payment.



Accordingly, we can explain that these two similar Pesukim are actually teaching us two very distinct lessons.

The Passuk in Parshas Shoftim that says, 'And a bribe you shall not take, for the bribe will blind the eyes of the wise', is referring to the typical bribery. Hence, it says 'You shall not take a bribe', ascribing to it a very clear prohibition. It also says, 'for the bribe will blind the eyes of the wise', to say that a judge who does take bribery

will not be able to use his wisdom to render a truthful judgement, because he will be blinded by the bribe which he accepted, and hence his judgement will be invalid.

On the other hand, the Passuk in our Parsha that says, 'A bribe you shall not take, for the bribe will blind those who are insightful', isn't referring to the classic bribery, rather is referring to a judge who takes payment for unemployment which isn't evident. Thus, the Torah does not say, 'You shall not take a bribe', rather only says, 'A bribe you shall not take', alluding to the fact that although it isn't prohibited, nevertheless it isn't morally correct to do so. Similarly, the Torah only says, 'it will blind those who are insightful', for although the payment won't blind him from his basic wisdom, thus his judgement would still be valid, nevertheless it will blind him from the extra measure of insightfulness, thus it is disgraceful to take the payment.

זרע שמשון פרשתנו אות ז



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