



# דרכים בפרשה

משפטים

## ואלה המשפטים

“And these are the laws”

Our *parshah* begins with the words **ואלה המשפטים** אשר תשים לפניהם. Rashi explains that it begins with the word ‘and’ in order to connect the *halachos* of our *parshah* to the aforementioned *Aseres Hadibros*. This teaches that all of the *halachos* of the Torah were from Sinai. Even the seemingly mundane laws have the raw power and energy to transform and elevate the person and bring him close to Hashem.

The *meforshim* wonder why the famous proclamation of **נעשה ונשמע** is mentioned here and not in the previous *parshah* when the Torah was given. Although as a rule, **אין מוקדם ומאוחר בתורה** — there is no specific chronological order in the Torah (Rashi), we can suggest on a simple level that it was proclaimed here after all the *halachos* of *bein adam l'chaveiro* to include them as well. When it comes to *halachos* of *bein adam l'Makom*, we are quickly prepared to say that although we may not understand it, we do the *ratzon Hashem*. However, when it comes to monetary laws and how we deal with our peers — and let us not forget to add ego and a host of other *middos* to the mix — perhaps it may be more difficult to jump right in with zeal when our own logic tells us otherwise. Therefore, our *parshah* begins with the letter *vov* to connect these with the previous *halachos*. It is at this point that we now proclaim **נעשה ונשמע**, referring to all of the *mitzvos*.

The story is told about a husband that came home to find his wife holding a chicken in her hand, saying that a question arose regarding its *kashrus*. The husband ran to the rav, only to receive the *psak* that it was indeed *treif*. When the husband told the wife what had transpired, the wife suggested that perhaps they find a new rav. The husband responded that this is our rav and we always follow him, no questions asked. The next day a question arose with their *mezuzah*. The rav ruled that it

needed to be replaced. Once again, the wife suggested that they go to a new rav, to which the husband reiterated that we always follow the rav, and it is times like this that we say **נעשה ונשמע** — we don’t understand but we accept.

The next day, the neighbor’s child was playing and broke their window. The child’s father claimed that since it was damage done by a *koton* (minor), he is exempt from paying. They agreed to go to the rav for his ruling. The rav ruled in favor of the neighbor. Storming through the front door of his home, the husband announced to his wife, “Zelda, we are finding ourselves a new rav!”

But what changed? Wasn’t he all into the rav and accepting his *psak* even when it was not in his own favor? The answer is simple: a *psak* in *bein adam l'Makom* was easier for him to accept because “it is not against me.” However, in the case of the neighbor, the rav ruled like the neighbor and not like him. That is much harder to accept. It is for this reason that after learning these *halachos* as well, the Torah now mentions that Klal Yisroel proclaimed **נעשה ונשמע**.

One of the many *halachos* that our *parshah* deals with is the case of a person that steals an ox or a lamb and he either kills or sells the stolen animal. When the thief is caught, he is required to pay the value of what he stole, and is also fined: **כי יגנב איש שור או־שה וטבחו או מכרו חמשה בקר ישלם תחת השור — וארבע־צאן תחת השה** — *If a man steals an ox or a lamb and slaughters it or sells it, he shall pay five cattle for the ox or four sheep for the lamb.*

Usually, *halacha* determines that a caught thief pays **כפל** – a requirement to pay twice the value of what was stolen. But in this case, when the thief continued to sin by killing or selling the animal, he gets an even higher fine. The logic is as follows: As



long as what was stolen is still intact, it can be returned to its owner and the only actual damage caused is the loss of time. However, by killing or selling the animal, the animal is no longer intact and the damage is complete, so the fine is much greater.

*This, of course, raises a question regarding the discrepancies between four times the value of an ox and five times the value of a sheep. Why should there be a difference? Rashi quotes the Gemara in Meseches Bava Kama (79b) which offers two approaches: יוחנן בן זכאי חס המקום על כבודן 'אמר ר' שור שהולך ברגליו ולא נתבזה בו הגב לנשאו - של בריות משלם, שה שנושאו על כתפו, משלם חמשה, על כתפו אמר רבי מאיר בא וראה כמה. ארבעה הואיל ונתבזה בו שה שור שבטלו ממלאכתו חמשה - גדול כחה של מלאכה שה - שלא בטלו ממלאכתו ארבעה - Rabban Yochanan ben Zakkai said, "The Omnipresent has much consideration for the honor of His creatures: when an ox — an animal that can walk by itself — has been stolen and sold or slaughtered, in which case the thief did not need to degrade himself by carrying it on his shoulder, he has to pay fivefold restitution. In the case of a lamb, however, which he had to carry on his shoulder, he has to pay only the fourfold, because he was forced to degrade himself by carrying it." Rabbi Meir said, "Come and see how great is the virtue of labor: In the case of the theft of an ox which he (the thief) withdrew from its labor, thereby causing a loss to its owner, he has to repay five oxen, whereas in the case of a lamb which he has not withdrawn from its labor — only four.*

Rabban Yochanan Ben Zakkai teaches us that the *halacha* determining the thief's fine takes into account the honor of the thief himself. If he endured some form of embarrassment — while he was in the midst of committing a crime! — his fine is lowered. It seems difficult to grasp why we must be considerate of the thief who chose to embarrass himself. The Me'iri (Beis Habechira, Bava Kama) sees in this a *limud* for everyone: the Torah wants to educate the thief, and the rest of us as well. Even a person that sunk so low as to commit the *aveirah*

of theft — he too is worthy of basic dignity. The thief has to hear this when he is fined. This way, he will internalize that even if he behaved in an undignified manner, the Torah still sees him as someone worthy of respect. Upon seeing that Hashem still believe in him, he will surely change his ways.

Similarly, there is a classic *vort* from Rav Nachman of Breslov (Likutei Moharan 282, "azamra"). Over there he discusses the concept of judging a person favorably no matter what that person has done. There will always be a redeeming factor which one can find. By doing so, one has the power to lift up the *rasha* and cause him to change his ways. Rav Nachman continues that the same practice should be applied when we look at ourselves. Surely, we can find something we are good at; there's certainly at least one redeeming value that we can build on and which will cause us to improve in all other areas as well.

Perhaps Rav Meir (the second idea that Rashi quotes) can also be understood in the light of embarrassment and self-worth. The Rambam writes: *שמונה מעלות יש בצדקה זו למעלה מזו. מעלה גדולה שאין למעלה ממנה זה המחזיק ביד ישראל שמך ונותן לו מתנה או הלואה או עושה עמו שתפות או ממציא לו — מלאכה כדי לחזק את ידו עד שלא יצטרך לבריות לשאל — There are eight levels of tzedakah, each one greater than the other. The greatest level, higher than all the rest, is to fortify a fellow Jew and give him a gift, a loan, form with him a partnership, or find work for him, until he is strong enough so that he does not need to ask others [for sustenance].* In this manner, you are not only providing him with the necessary funds to support himself and his family but you are also restoring his dignity. By stealing a person's animal, the thief has taken away his means of earning a livelihood, thus not only causing the owner a financial loss but also great embarrassment. Accordingly, Rav Yochanan ben Zakkai is focusing on the shame of the thief, whereas Rav Meir is focusing on that of the owner.

**מרדכי אפפּעל, Good Shabbos,**



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