



# דרכים בפרשה

משפטים



**כי יגנב־איש שור או־שה וטבחו או מכרו חמשה בקר ישלם תחת השור וארבע־צאן**

**השה - 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.*

Our parsha 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 parsha to the aforementioned Aseres Hadibros. This teaches that all of the halachos 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 געשה ונשמע is mentioned here and not in the previous parsha 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 of our parsha to include these 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 law and how we deal with other people, and let us not forget to add ego and a host of other middos to the mix, perhaps it may be more difficult to raise the white flag when our own logic tells us otherwise. Therefore, our parsha begins with the letter וּׁׁׁ to connect these with the previous halachos. It is at this point that we now proclaim געשה ונשמע, referring to all the mitzvos.

The story is told about the husband that came home to find his wife holding a chicken in her hand. A question arose regarding its kashrus. The husband ran to the rav only to receive the *psak* (ruling) 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 געשה 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 he was able to accept because “it is not against me.” However, in the case of the neighbor, the rav ruled like the neighbor and not like me. 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 געשה ונשמע.

One of the many halachos that our parsha 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 down-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 Mesechta Bava Kama (79b) which offers two approaches: אמר ר' יוחנן בן זכאי חס המקום על כבודן של בריות – שור שהולך ברגליו ולא נתבזה בו הגבגב לנשאו על כתפו, משלם חמשה, שה שנושאו על כתפו, משלם ארבעה הואיל ונתבזה בו. אמר רבי מאיר בא וראה כמה גדול כחה של מלאכה – שור שבטלו ממלאכתו חמשה, שה שלא בטלו ממלאכתו ארבעה – *Rabban Yochanan ben Zakai 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 labour: In the case of the theft of an ox which he (the thief) withdrew from its labour, thereby causing a loss to its owner, he has to repay five oxen, in the case of a lamb which he has not withdrawn from its labour — only four.*

Rabban Yochanan Ben Zakai teaches us that the halacha determining the thief's fine takes into account the honor of the thief himself. If he experienced some sort of embarrassment, his fine is lower! It seems difficult to grasp why we must be considerate of the thief who embarrassed himself while committing a crime. The Meiri (Beis Habechira, Bava Kama) sees in this a limud for everyone: The Torah wants to educate the thief, and all of us. Even a person that sunk so low as to commit an aveira, even he is worthy of respect. The thief has to hear this when he is fined. The thief will internalize that, even if he himself behaved in an undignified manner, the Torah still sees him as someone worthy of respect. Upon seeing that others 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 been through. 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 that we can build on and that will cause us to improve in all other areas as well.

Perhaps, Rav Meir (the second idea that rashi quoted) 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 Zakai is focusing on the shame of the thief whereas Rav Meir is focusing on that of the owner.

**מרדכי אפפעל, Good Shabbos,**



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