

# DIFFERENT COURTS, DIFFERENT RULES

*by Shlomo Katz*

## Parshas Ki Seitzei

### Different Courts, Different Rules

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Today's Learning:  
Yevamot 7:6-8:1  
O.C. 619:3-5  
Daf Yomi (Bavli): Yoma 87  
Daf Yomi (Yerushalmi): Challah 1

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One of the sections of our parashah sets out the laws of the ben sorer u'moreh / wayward and rebellious son who steals meat and wine from his parents and is put to death. Rashi z"l explains that a ben sorer u'moreh is killed to save him from his own destiny, since he is destined to be a murderer and a thief.

Several commentaries observe that this appears to contradict another well-known statement of

Rashi, specifically his comment to Bereishit 21:17, that even though Hashem knew that Yishmael would one day oppress the Jewish People, He saved Yishmael from dying of thirst because, at that moment, Yishmael was righteous (or innocent). Is a person's future taken into account when he is judged, or not?

R' Yehuda Loewe z"l (the Maharal of Prague; died 1609) answers that there is no contradiction. Rather, different rules apply to judgments in the Heavenly court (Yishmael) and a human court (ben sorer u'moreh). Specifically, the role of the human court system is to save wrongdoers from the punishment that they will obtain at the hands of Heaven. If it will further that goal, a human court can take a person's future into account. (Gur Aryeh)

Elsewhere, Maharal observes that the Heavenly court takes into account in its judgment whether the sinner has repented. However, a human court may not do that. Maharal explains that the role of the human court is to distance a person from evil. A human court is charged solely with looking at a person's "dark side." In contrast, the Heavenly court judges the whole person. (Netiv Ha'teshuvah ch.2, as explained by R' Yehoshua Hertman shlita, editor of a recent, annotated edition of Maharal's writings)

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*"You shall not see the donkey of your brother or his ox falling on the road and hide yourself from them; you shall surely stand them up, with him."* (22:4)

Rashi z"l explains the last two words of the verse to mean that you are not obligated to assist the falling animal if its owner sits idly by. You are only obligated to help "with him." R' Yehoshua Horowitz z"l (the Dzikover Rebbe; died 1912) explains this verse and Rashi's comment allegorically as follows:

The future redemption will be brought about as a result of our teshuvah / repentance. It will come about through what kabbalists refer to as "Itaruta de'le'tata" / "awakening from below." On the other hand, our Sages teach that if Hashem did not help us to overcome our yetzer hara, we could never do it on our own.

Our Sages say there will be two meshichim (messiahs) to herald the redemption--one from the tribe of Yosef, the other from the family of King David. The ox in our verse alludes to Mashiach ben Yosef (see Devarim 33:17); the donkey to Mashiach ben David (see Zechariah 9:9). "You shall surely stand them up," our verse says. Do your part to support the arrival of Mashiach ben Yosef and Mashiach ben David.

However, your actions must be "with Him." Hashem must help us overcome the yetzer hara, thus doing His part to bring mashiach.

(Ateret Yeshuah)

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*"You shall surely send away the mother and take the young for yourself, so that it will be good for you and will prolong your days."* (22:7)

The Gemara (Berachot 33b) states that if someone prays, "May Your mercy reach the bird's nest," we silence him. Why? The Gemara offers two reasons: Either because he incites jealousy among the creatures of creation by implying that Hashem has mercy on one creature more than others, or because he implies that Hashem's laws are motivated by mercy when in fact they are decrees.

R' Meir ben Chalifah Bekayim z"l (Izmir, Turkey; died 1769) asks: The Gemara implies that sending away a mother bird and taking away its young is merciful. In fact, it seems to be cruel. Indeed, the Tikkunei Zohar teaches that the mother bird goes and complains to its guardian angel.

Also, why does the Gemara phrase the (improper) prayer in the future tense?

R' Bekayim explains: The Tikkunei Zohar teaches that when the guardian angel of the birds comes to place his complaint before Hashem (regarding the young birds that were taken), his words "awaken" Hashem's mercy over His own flock (Klal Yisrael / the Jewish People) and their pillaged nest (Yerushalayim). As a result of performing a mitzvah, the Jewish People merit Hashem's mercy. In this light, the prayer, "May Your mercy reach the bird's nest," can be understood as a prayer that Hashem have mercy prospectively--hence the future tense-- on Klal Yisrael and Yerushalayim.

Why is such a prayer bad? Because it incites jealousy. It causes the angels that Hashem has created to represent the interests of birds in the Heavenly court to complain that some birds have the opportunity to be the instruments that bring merit to Klal Yisrael while other birds do not. Alternatively, it implies that Hashem devised this mitzvah because He has mercy on us. That is not true; Hashem's mitzvot are decrees, though their consequence may be to lead Hashem to act mercifully toward Klal Yisrael.

(Meir Bat Ayin ch. 95)

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## Teshuvah

Why is no berachah / blessing recited before performing the mitzvah of teshuvah / repentance? R' Menachem Simcha Katz shlita (Brooklyn, N.Y.) offers an anthology of answers, including the ones below. (Note that the parenthetical objections to some of the answers are from the cited work.)

(1) No berachah is recited because it is not within man's ability to complete the mitzvah, as only G-d can decide whether one's repentance will be accepted. For the same reason, no berachah is recited when giving charity, as the completion of the mitzvah is dependent on finding a worthy recipient. (One can argue, however, that this reason is not valid because we are guaranteed that heartfelt teshuvah will be accepted.)

- (2) No berachah is recited because teshuvah is a mitzvah that comes about via a sin. Likewise, no berachah is recited over the mitzvah of returning a stolen object.
- (3) No berachah is recited because the mitzvah of teshuvah is performed primarily in one's heart. Likewise, there is no blessing for bittul chametz / nullifying chametz.
- (4) The formula for the berachah on mitzvot is, "Who has sanctified us with His commandments and has commanded us to . . ." However, teshuvah is not a mitzvah that one should perform because he was commanded to do so. Rather, it should be performed because one is self-motivated to repent. Indeed, it would be an insult to G-d for a person to say, "I am repenting because You told me to."
- (5) No berachah is recited because repentance is not complete unless G-d can testify that the penitent truly intends to never repeat his sin. This level is very difficult to attain, and, in effect, any berachah recited may be a blessing in vain. For the same reason, no berachah is recited on the mitzvah of honoring parents, since honoring parents to the full extent of the law is nearly impossible.
- (6) No berachah is recited because teshuvah takes a long time.
- (7) No berachah is recited because teshuvah often occurs spontaneously.
- (Simcha L'Ish Ch.38)
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## Letters from our Sages

This week we present a letter written by Rambam z"l (R' Moshe ben Maimon; "Maimonides"; 1135-1204) to a convert by the name of Ovadiah. Prior to his correspondence with Rambam, the letter's addressee had asked his teacher whether Moslems are considered idol worshippers according to halachah. In his response, that teacher had, for some reason, addressed Ovadiah as a fool. After addressing the question, Rambam adds:

Regarding the fact that your teacher answered you inappropriately, saddened you, insulted you, and called you a fool-- this is a great sin on his part. It is likely that he sinned inadvertently and should ask your forgiveness, although you are his student. Then he should fast, cry out, pray, and humble himself; maybe G-d will forgive him. Was he drunk that he did not know that the Torah demands 36 times [some of them in our parashah] that we take pains to treat a convert properly? Furthermore, while he was discussing whether Ishmaelites are idol worshippers, he should have worried about his anger which led him to insult a convert unjustly, for our Sages have said that one who becomes angry is himself considered an idolator. Know that the obligation that the Torah has imposed on us with respect to converts is great. When it comes to parents, we are commanded to honor and fear them. With regard to prophets, we are commanded to listen to them. It is possible to honor, fear, or listen to someone you do not love. In contrast, we are commanded to love converts just as we are commanded to love Hashem. Also, the Torah says that Hashem Himself loves converts.

The fact that he called you a fool is incredible. You are a person who has left his father, his birthplace and his nation, which is a great power, and because of an understanding heart came to cling to the nation which, as of today, is "loathed by the nation" [quoting Yishayah 49:7]. . . . You have recognized [the truth of Judaism] and have run after Hashem, passed down the holy road, entered under the wings of the Shechinah, and [figuratively] sat in the dust at the feet of Moshe Rabbeinu, the master of all the prophets, a"h. You desire the mitzvot and your heart has uplifted you to approach and be enlightened by the light of life [the Torah], to rise to the level of angels and rejoice in the joy of the righteous . . . . Should such a person be called a "fool"? G-d forbid. You are not a fool ("ksil") but rather an understanding person ("maskil"), a disciple of Avraham Avinu, who left his father and birthplace to follow after Hashem. May He who blessed your master Avraham and gave him his reward in this world and the World-to-Come bless you, reward you appropriately in this world and the World-to-Come, lengthen your days until you merit to teach Hashem's laws to His entire flock, and cause you to merit to see the ultimate consolation that is destined to come to Yisrael. [Reprinted in Otzrot Ha'mussar p.84]

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