



Volume 3. Issue 15.

## Truth and Peace

*Rabbi Akiva* says: “We do not show compassion in judgment...” (*Ketubot* 9:2, Kehati trans.).

Although said regarding a particular context, this statement of *Rabbi Akiva* begs a much larger question - What is the relationship between *din* (strict law) and *rachamim* (compassion) in *Halacha*? As will be shown, *Halacha* does not regard these two concepts as an impossible combination, but rather, in some instances as one and the same, and in others, as complementary entities.

### **Peshara (compromise)**

On the issue of the role of the *Beit Din* as the arbiter of justice in Jewish society, the *Gemara* (*Sanhedrin* 6b) presents (among others) the following opinion:

*R' Yehoshua ben Karcha* says: It is a *mitzvah* for a judge to arbitrate a compromise, as it is stated: “Execute truth and judgement of peace in your gates” (*Zechariah* 8:16). But where there is judgement there is no peace; and where there is peace there is no judgement! What then is the judgement which has within it peace? I would say this is compromise.

The *Rambam* accepted this view and took it to its logical conclusion. He writes (*Yad, Hilchot Sanhedrin* 22:4):

It is a *mitzvah* to ask the disputing parties at the beginning of the court case whether they desire *din* or *peshara*...and any *Beit Din* that consistently rules a compromise is praiseworthy.

Thus, we see an example, and a fairly wide-reaching one at that, in which *Halacha* recognizes the need to take into account peace as well as truth.

### **Kofin Al Midat Sodom (coercion against behaviour akin to that of the people of Sodom)**

Here we have another *Halachic* principle that legislates a higher moral standard into mainstream law. As Arnold Cohen writes, “In Jewish Civil Law, equity will not allow a man...to adopt a “dog in the manger attitude”, refusing to confer upon another a benefit which costs him nothing. Provided he suffers no real or contingent harm, a man will be coerced to bestow the required privilege on his fellow.”<sup>1</sup> This notion appears in a well-known *Mishnah* in *Pirkei Avot*. It states (5:13): There are four attitudes among men:

There are those who say, “What’s mine is mine and what’s yours is yours”. This is a median moral attitude and some say this is an attitude that was

carried by the people of Sodom.... Those who say, “What’s mine is yours and what’s yours is yours”- is righteous.

Once again, whilst on the one hand the above *Mishnah* recognises the element of ‘righteousness’ inherent in an altruistic stance on personal property rights, *Halacha* enforces this lofty model as standard practice.

### **Above and Beyond the Law (*Lifnim Mi’Shurat HaDin*)**

A third example of when compassion and ethics become part and parcel with strict law is in the implementation of the concept of *Lifnim Mi’Shurat HaDin*. On this topic, the *Gemara* (*Bava Metzia* 83a) brings a powerful story:

*Rabba bar bar Chanann* (*RbbC*) had a keg of wine broken by porters. He took their cloaks as payment. They went and told *Rav*. *Rav* said to *RbbC*, “Give them back their cloaks!” *RbbC* then asked him, “Is that the *din* (strict law)?” *Rav* responded, “Yes, as it is written: In order that you go on the path of good people (*Mishlei* 2:20).” *RbbC* gave the porters back their cloaks. They (the porters) said to *Rav*, “We are poor people, and we laboured the entire day; we are starving and have nothing to eat.” *Rav* then said to *RbbC*, “Pay them their fee!” He asked *Rav*, “Is that the *din*?” *Rav* answered him, “Yes! As that very verse I quoted earlier continues: and keep the ways of righteous people.”

As *Rashi* on that *Gemara* notes, the verses quoted refer to “goodness” and “righteousness” rather than strict law and thus indicate that *Rav*’s judgement (and so too his definition of ‘*din*’ in this instance) was one that required *Rabba bar bar Chanann* to go beyond the letter of the law in his treatment of the porters.

We are left to conclude, along with *Rav Moshe Avigdor Amiel* (former Chief Rabbi of Tel Aviv-Jaffa) that “*Halacha* does contain two categories of ‘strict law’ and ‘beyond the letter of the law’, but under *Halacha*, ‘strict law’ itself often contains the ‘beyond the letter of the law’.”<sup>2</sup> *Rav Amiel* further explains that the character of *Halacha* parallels the character of *Am Yisrael*. For regarding us it is written, “your nation are all righteous people” (*Yeshaya* 60:21) and regarding Torah it is written, “And what nation is there so great, that has statutes and judgements so righteous as all this *Torah*” (*Devarim* 4:8).<sup>3</sup>

*Noam Greenberger*

<sup>1</sup> An Introduction to Jewish Civil Law, p.173

<sup>2</sup> Ethics and Legality in Jewish Law, p.17.

<sup>3</sup> Ibid., p.9.

## Revision Questions

כתובות ח' ב' – ט' ז'

- How does *R' Shimon* differentiate between property that, if sold by the wife after marriage, the husband may reclaim it from the buyers and property that the husband may not reclaim? (ח' ב')
- What is done with the following items that a wife inherits: (ח' ג')
  - Money?
  - Picked/detached fruit?
  - Unpicked fruit?
- Complete the following phrase and explain: (ח' ד')
 

"רבי שמעון אומר: מקום שיפה כוחו בכניסתה \_\_\_\_\_ ,  
מקום שהורע כוחו בכניסתה \_\_\_\_\_ "
- What is done with the following items that a wife inherits: (ח' ה')
  - Elderly servants?
  - Old vines?
- When can a husband claim the expenses paid on *nichsei melog*? (ח' ה')
- Are there any restrictions placed on a *shomeret yabam* on the sale of property she inherits? (ח' ו')
- Explain the opinions of *Beit Shammai* and *Beit Hillel* regarding what is done with the property of a *shomeret yabam* that dies? (ח' ו')
- What is done with the *shomeret yabam*'s original husband's: (ח' ז')
  - Money?
  - Picked/detached fruit?
  - Unpicked fruit? (Explain both opinions.)
- Can the *yabam* set aside money for the *yavamah*'s *ketubah* in order to seize possession of his late brother's property? (ח' ח')
- What is the impact of the following statements made by a husband prior to marriage: (ט' א')
  - "דין ודברים אין לי בנכסך"?
  - "דין ודברים אין לי בנכסך ובפירותיהן"?
  - "דין ודברים אין לי בנכסך ובפירותיהן ובפרי ברותיהן, בחיין ובמותד"?
- Explain the debate regarding who inherits a collateral in the hands of a lender. (ט' ב')
- What other possessions are also debated in the same manner as the previous question? (ט' ג')
- If a wife is placed in charge of components of a business can the husband demand a *shevuah* from her (as in normal business partnerships)? (ט' ד')
- What is the impact of the following statements made by a husband prior to marriage: (ט' ה')
  - "נדר ושבועה אין לי עליך"?
  - "נדר ושבועה אין לי עליך ועל יורשיך הבאים ברשותיך"?
  - "נדר ושבועה אין לי ולא ירושי ולא לבאים ברשותי עליך ועל יורשיך הבאים ברשותיך"?
- If the widow is made custodian of her late husband property, can the *yorshim* demand a *shevuah* from her? (ט' ו')
- In which five cases must a widow vow prior to collecting her *ketubah*? (ט' ז')

## Local Shiurim

### Sunday -Thursday

Between mincha & ma'ariv  
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10 minutes before mincha  
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## Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
19 <sup>th</sup> November כ"ח חשוון	20 <sup>th</sup> November כ"ט חשוון	21 <sup>st</sup> November ל' חשוון ראש חודש	22 <sup>nd</sup> November א' כסלו ראש חודש	23 <sup>rd</sup> November ב' כסלו	24 <sup>th</sup> November ג' כסלו	25 <sup>th</sup> November ד' כסלו
Ketubot 9:8-9	Ketubot 10:1-2	Ketubot 10:3-4	Ketubot 10:5-6	Ketubot 11:1-2	Ketubot 11:3-4	Ketubot 11:5-6

