**S.A.L.T. – PARASHAT BEHAR**

**By Rav David Silverberg**

Motzaei Shabbat

The Torah in Parashat Behar commands, “*al tonu ish et achiv*” (25:14), which forbids selling something for a significantly higher price than its fair market value.  Several verses later (25:17), the Torah seems to repeat this command – “*ve-lo tonu ish et amito*” – though *Chazal* (Bava Metzia 58b) interpret this second command as referring to “*ona’at devarim*,” or inflicting emotional pain.  Just as it is forbidden to cause a person financial harm through unfair pricing, it is forbidden to cause a person emotional harm.

The Mishna (there in Bava Metzia) gives several examples of *ona’at devarim*, including inquiring into the price of an item that is for sale without any intention to purchase the item.  This knowingly causes the seller pain by raising his false hopes of making a sale.

The Gemara cites a *berayta* which, like the Mishna, cites various examples of the *ona’at devarim* prohibition, but this example – showing interest in merchandise one has no interest in purchasing – is attributed to Rabbi Yehuda.  The first *Tanna* cited by the Mishna omits this example, perhaps indicating that these *Tanna’im* debate the question of whether this practice is included in the prohibition of *ona’at devarim*.  It is perhaps for this reason, as several writers explained, that the Rambam, in discussing the laws of *ona’at devarim* (*Hilkhot Mekhira*, chapter 14), omits this example.  He may have felt that Rabbi Yehuda’s ruling represents the minority view among the *Tanna’im*, and according to the majority, expressing interest in merchandise one has no intention of buying does not fall under the prohibition of *ona’at devarim*.

Possible proof to this understanding may be brought from the Gemara in Masekhet Pesachim (112b), which tells of the ethical teachings presented by Rabbi Yishmael ben Rabbi Yossi to Rabbi Yehuda Ha-nasi.  One of these teachings, the Gemara relates, is, “Do not stand over merchandise at a time when you don’t have money.”  Seemingly, if this practice violates a Torah prohibition, there would be no need for Rabbi Yishmael to especially instruct his student to avoid it.  It appears that at least according to Rabbi Yishmael, expressing interest in merchandise does not violate a strict prohibition, and he was instructing his student to avoid it as a matter of general propriety and sensitivity.  This becomes understandable in light of the *berayta* in Masekhet Bava Metzia which attributes the view that this practice constitutes *ona’at devarim* to Rabbi Yehuda, indicating that this does not represent the majority opinion.

Most other *Rishonim*, however, include this practice as an example of *ona’at devarim*.  These include the Rif (in Bava Metzia), the *Sefer Ha-chinukh* (338), and the *Tur* (C.M. 228).  They apparently felt that although the *berayta* brings this example of *ona’at devarim* as a minority position, nevertheless, since it is included in the Mishna, which makes no mention of any debate, this view is the accepted opinion.  (Interestingly, the Rambam himself brings this example of *ona’at devarim* in *Sefer Ha-mitzvot* (*lo ta’aseh*251), despite omitting it in his presentation of the laws of *ona’at devarim* in *Hilkhot Mekhira*.)

As for Rabbi Yishmael’s instruction, which implies that expressing interest in merchandise does not violate the Torah prohibition of *ona’at devarim*, several *Acharonim* offer a different explanation of that passage.  Malbim (here in Parashat Behar), for example, writes that Rabbi Yishmael’s teaching – “Do not stand over merchandise at a time when you don’t have money” – refers to expressing interest in something which the owner will likely offer for free.  Rabbi Yishmael speaks of a distinguished Torah scholar who shows interest in something he cannot afford, prompting the owner to offer it to him as a gift out of respect for the sage.  This should be avoided, Rabbi Yishmael taught, as a rabbi’s receiving special privileges could easily create a *chilul Hashem* (defamation of God).  Malbim compares Rabbi Yishmael’s teaching with Rav’s famous comment in Masekhet Yoma (86a) that if he would purchase meat from the butcher on credit, this would cause a *chilul Hashem*, as people might think he received the meat for free.  According to this explanation, Rabbi Yishmael’s instruction has nothing at all to do with *ona’at devarim*, and thus does not prove that expressing interest in merchandise does not violate the *ona’at devarim* prohibition.

Sunday

Yesterday, we discussed the prohibition of *ona’at devarim* – inflicting emotional harm – as it applies, at least according to one view in the Gemara, to falsely showing interest in purchasing a product, which causes the seller by distress by arousing false hopes of making a transaction.  The Mishna in Masekhet Bava Metzia (58b) lists this among its examples of *ona’at devarim*, and the Gemara brings a *berayta* in which this example is cited in the name of Rabbi Yehuda.  After giving this example, Rabbi Yehuda concludes, “…*she-harei ha-davar massur la-leiv*” – “for this matter is entrusted to the heart.”  Meaning, this kind of *ona’at devarim* cannot be outwardly observed; such a violation is known only to the violator himself, because it depends entirely on his intention.  If one studies a piece of merchandise and makes inquiries about it, only he knows whether he seriously considers the purchase, or intends to cause the seller distress.  And thus whether such an action is purely innocent or a Torah violation depends entirely on the person’s mind.  For this reason, Rabbi Yehuda comments, the Torah in Parashat Behar (25:17) adds after issuing the prohibition of *ona’at devarim*, “you shall fear your God.”  Observance of this law demands fear of God, as only God knows a person’s thoughts, and so only God can know whether one who inquires about a piece of merchandise has pure intentions.

Rabbi Yehuda’s remark about the critical role of intent with regard to *ona’at devarim* gives rise to the question of whether one violates this prohibition if he intends to inflict harm but his remark does not cause any harm.  Perhaps, just as one who sincerely considers purchasing an item does not violate *ona’at devarim* through his inquiry even if he causes the seller distress by deciding against the purchase, as his intentions were pure, conversely, we might conclude that one who says something to hurt his fellow violates this command even if the remark did not affect the other person.

A possible basis for this conclusion is the Gemara’s discussion in this context of “*mekhaneh sheim ra la-chaveiro*” – the prohibition against calling one’s fellow by a derogatory name.  The Gemara clarifies that this constitutes a grave transgression even if the person has grown accustomed to the nickname.  Rashi explains that although the person does not experience embarrassment upon hearing this name, because he has already been called by this name numerous times, nevertheless, using this name is sinful because, in Rashi’s words, “he intended to embarrass him.”  The implication of Rashi’s comments is that the determining factor with regard to *ona’at devarim* is intent, and thus even if the words spoken with evil intent inflicted no harm, the prohibition has been transgressed.

One could, however, refute this proof, and suggest that even if a person has grown accustomed to a derogatory nickname, he nevertheless experiences a degree of shame and humiliation when it is used.  The use of an insulting nickname in this case thus constitutes *ona’at devarim* because it was spoken with hostile intention and because it indeed inflicted pain, albeit limited pain.  As such, this does not necessarily prove that an intended insult transgresses *ona’at devarim* if it ended up not causing any emotional harm at all.

(Based on Rav Moshe Margalit’s *Mishpat Ona’a*, pp. 99-100)

Monday

The Torah in Parashat Behar (25) discusses various laws relevant to the sale of real property, including the provision allowing one who is forced to sell property to buy it back when he obtains the means to do so. The Torah distinguishes in this regard between *batei arei choma* – homes in walled cities – and other properties, stating that *batei arei choma* may be bought back only within the first year after the sale. If the seller does not buy the home back within a year, the sale is final, and the home does not return to the original owner even at *yovel* (the jubilee year). This is in contrast to other properties, which may be bought back by the original owner at any time, and if they aren’t, then they return to the owner with the onset of *yovel*. The Torah makes an exception to the law of *batei arei choma* in the case of the *Leviyim*’s cities: if a *Levi* is forced to sell his home, he is given the opportunity to buy it back at any time.

Rav Mordechai Yosef Leiner of Izhbitz, in *Mei Ha-shilo’ach*, suggests viewing the unique law of *batei arei choma* as symbolizing the potential “permanence” of interpersonal offenses. Sins committed against God alone can be atoned through repentance, whereas interpersonal offenses cannot be atoned without receiving the victim’s forgiveness (Mishna, Yoma 85b). Accordingly, the *Mei Ha-shilo’ach* suggests a parallel between the laws of the redemption of sold property and atonement. Most properties can be purchased back after they are sold, just as sins committed against God can be atoned at any time through the process of repentance. The law of *batei arei choma*, however, represents sins committed against one’s fellow, which could turn out to be a permanent stain on the perpetrator’s record if he does not seek reconciliation with the victim and earn his forgiveness. The *Mei Ha-shilo’ach* writes that just as the seller has only the first year to buy back the home, similarly, it is advisable for one who wronged his fellow to seek his forgiveness soon afterward, rather than allow the feelings of hostility to fester, which could make reconciliation far more difficult to achieve.

Walled cities are used to represent interpersonal offenses, the *Mei Ha-shilo’ach* writes, because the Gemara (Arakhin 15b) describes the lips as protective “walls” which are to prevent hurtful and inappropriate speech from leaving a person’ mouth. The case of one who sells his home in a walled city thus alludes to one who chose to surrender control over his “walled city” – his faculty of speech – and use it freely and without discretion, causing great harm to his fellow.

Addressing the unique status of a Levi’s home, the *Mei Ha-shilo’ach* suggests that this law reflects the notion that by devotedly serving God, we are always able, in a sense, to reclaim anything we’ve lost. The *Leviyim*, who ministered in the *Beit Ha-mikdash*, represent a life devoted to the service of God. And through the service of God, the *Mei Ha-shilo’ach* writes, “a person can achieve everything he’s lost.” What this might mean is that when we devote our lives to serving God, we are able to put our material possessions into a broader perspective. Financial losses mean less to us if we live with our minds focused on the goal of serving God. And thus in the cities of the *Leviyim* – for those who live like the *Leviyim*, devoted to the service of the Almighty – the loss of property is never permanent, because the financial loss will be offset by the satisfaction of serving God and maximizing one’s spiritual potential, the value of which far exceeds that of any material possession we could ever acquire.

Tuesday

Parashat Behar discusses the case of a person who was compelled to sell part of his portion in the Land of Israel due to financial straits, and the Torah grants this individual the opportunity to buy the land back, even if the buyer does not wish to return it. The first case addressed is that of a “*go’el*” – literally, “redeemer” – referring to a blood relative who has the means to assist his kin who has fallen upon hard times, and buys the property back from the buyer. The Torah then writes, “And a man who does not have a redeemer, and he succeeds and comes upon the amount for his redemption…” (25:26). If the person has no relative who is both able and willing to redeem his property, but his fortune is eventually reversed and he obtains sufficient funds, then he himself can repurchase the land from the buyer. In both cases, the Torah instructs, the value of the years that have passed since the original transaction is deducted from the original sale price, as the buyer had benefitted from the land during the interim period.

The *Siftei Tzadik* (Rav Pinchas Menachem of Piltz, grandson of the *Chiddushei Ha-Rim*) suggests reading the phrase “and he succeeds and comes upon the amount” as not merely a description of a foreseen scenario, but also the Torah’s reassurance to the financially struggling individual. Upon falling into dire straits that compel him to sell his family estate, and after seeing that he has nobody to help him recover his lost property, this person may likely fall into despair. The Torah therefore assures him that as hopeless as the situation appears, he can trust that if nobody else assists him, he will, eventually, be able to recover the land on his own.

We might add that this reassurance also contains within it an admonition. In the case of a person whose relatives refuse to lend him the assistance he needs, his instinctive reaction might be to wallow in self-pity, resentment and despair, instead of trusting in his ability to change his situation. After first looking around for assistance, only to find that none was forthcoming, the individual might trap himself in his resentment and sorrow, and resign himself to a condition of hardship. The Torah therefore instructs a person who has no “*go’el*” to trust in his capacity to gradually change his situation, to realize that even if nobody is helping him, he is still able to help himself. Rather than feel helplessly dependent on others, the individual is told to work towards improving his situation, to patiently but earnestly strive to recover and rebuild, and not to remain forever chained by a feeling of dependency on the grace of others.

Wednesday

We find in Parashat Behar a number of laws relevant to servants owned by fellow members of *Benei Yisrael*. The Torah imposes restrictions both on the nature of the servitude that is permitted, forbidding the master from forcing the servant to perform demeaning or harsh labor (25:39,42), and on the duration of servitude, requiring releasing the servant with the onset of the jubilee year (25:40). In concluding this section, the Torah explains, “For it is to Me that the Israelites are servants; they are My servants whom I took from Egypt” (25:55). Rashi explains: “*Shetari kodem*” – “My contract came first.” *Benei Yisrael*’s “contract” with God, whereby they became His servants, precedes any other arrangement that one might wish to make, and, as such, no member can ever become anybody else’s servant. We are all already “owned” by God, and thus we cannot come under the ownership of any human being. Therefore, the institution of servitude in Torah law applies only in very limited fashion, in a way that makes it clear that no member of *Benei Yisrael* can be “owned” by another person.

Rav Shmuel Borenstein of Sochatchov, in *Sheim Mi-Shmuel*, explores the deeper significance of this pronouncement – “For it is to Me that the Israelites are servants” – in light of the famous comments of Ibn Ezra in explaining the concept of *nezirut* (Bamidbar 6:7). Ibn Ezra cites those who associate the word “*nazir*” with the word “*neizer*” – “crown,” an association indicated already by the Torah when it says of a *nazir* who accidentally violated his vow by becoming impure, “*timei rosh nizro*” – “he has defiled his crowned head” (Bamidbar 6:9). To explain why one who takes the nazirite vow is considered “crowned,” Ibn Ezra writes that people are generally “slaves” to human passions, and the *nazir*, who seeks to seize control over his base desires by abstaining from wine, becomes a “king” by exerting this control. The *nazir* is described as wearing a “crown” because he “reigns” over his impulses, as opposed to most people who are obedient servants of their impulses.

The *Sheim Mi-Shmuel* applies Ibn Ezra’s remarks to God’s pronouncement in Parashat Behar, “*Ki li Benei Yisrael avadim*” – that *Benei Yisrael* are servants only to Him. This means not only that we may not come under the control of any other human being, but also that we may not come under the control of our own instincts and impulses. Just as God’s “contract” precedes any arrangement of subservience we might seek with another person, so does it precede subservience to ourselves. When we proclaim each day our *kabbalat ol Malkhut Shamayim* – our acceptance of the “yoke” divine kingship – we are, in essence, proclaiming our rejection of all other “yokes,” that we are not subservient to any people or to our own impulses. We affirm that no force, whether external or internal, is more authoritative that the divine command, that our commitment to God is stronger than any desire or instinct we might have, and thus we are fully capable of restraining our impulses in faithful obedience to the Almighty’s will.

Thursday

Parashat Behar introduces the prohibition of *ona’a*, which forbids significantly overcharging or underpaying for merchandise. The context in which this prohibition is introduced is the law of *yovel*, which requires the return of all purchased lands to their original owners with the onset of the jubilee year. After presenting the law of *yovel*, the Torah commands (25:14) that when land is sold, a calculation must be done to determine the property’s value in consideration of the temporary nature of the sale. Meaning, the value must be established based on the number of years remaining until the *yovel*, because this is the number of years when the buyer will be benefitting from the land. *Chazal* derived from here the general prohibition against charging or paying an unfair price when a transaction is made.

The Ramban, in his famous comments to this verse, notes the Mishna’s ruling (Bava Metzia 56a) that the law of *ona’a* applies only to *metaltelin* – moveable items, as opposed to *karka’ot* – land. Surprisingly, despite the fact that the Torah introduces the law of *ona’a* in reference to the pricing of land as affected by *yovel*, this law specifically does not apply to land, and pertains only to moveable property. How, the Ramban asks, could *Chazal* exclude real estate transactions from *ona’a*, if it is in reference to such transactions that the concept of *ona’a* is presented in the Torah?

The Ramban answers by boldly positing that the *ona’a* prohibition indeed applies even to land, and it is only in regard to certain details that land is excluded from this law. *Halakha* establishes that if the difference between the market price and the price paid is large enough (a “*shetut*”), the violator must pay the difference to the other party, and if the difference is even higher than this amount, the sale is revoked. The Ramban suggests that these provisions apply only to *metaltelin*, but the prohibition of *ona’a* applies to all transactions, including land exchanges. This is how the Ramban reconciles the law excluding land from *ona’a* with the fact that this prohibition is introduced in the context of land transactions.

A different answer emerges from the comments of Chizkuni to this verse. Chizkuni writes that the law of *ona’a* applies to land transactions only when the laws of *yovel* apply, such that all land transactions are temporary. The institution of *yovel* applies only when the majority of the Jewish People reside in *Eretz Yisrael*, and according to Chizkuni, and it is only then – and in *Eretz Yisrael* – when the prohibition of *ona’a* is applicable to transactions of land. When the *mitzva* of *yovel* is not binding – such as after the exile from the Land of Israel, and anytime outside the Land of Israel – the *ona’a* prohibition does not apply to land transactions. In light of this distinction, it is perfectly understandable why the Torah introduces the law of *ona’a* in the context of land transactions, despite the fact that such transactions are not included in the law of *ona’a*. The Torah here speaks of how land transactions are affected by the laws of *yovel* – and when the laws of *yovel* are applicable, according to Chizkuni, even land transactions are included under the prohibition of *ona’a*.

The explanation of Chizkuni’s position is that when the laws of *yovel* apply, the sale of land in *Eretz Yisrael* is more of a lease than a sale. The buyer receives rights to the land only temporarily, until *yovel*, and thus this arrangement does not qualify as the sale of land. It seems likely that Chizkuni follows the position of the Mordekhai (Bava Metzia 305) that the law of *ona’a* applies to leasing land. Therefore, when the *yovel* is observed, all land sales in *Eretz Yisrael* are actually leases, and thus the laws of *ona’a* apply, despite the general rule that *ona’a* does not apply to land transactions.

(See Rav Moshe Kagan’s *Chemdat Moshe*, Parashat Behar)

Friday

Yesterday, we noted the question raised by the Ramban, in his commentary to Parashat Behar (25:14), regarding the prohibition of *ona’a*, which forbids charging or paying an unfair price for merchandise. The Mishna (Bava Metzia 56a) establishes that this law applies specifically to *metaltelin* (moveable property), and not to *karka’ot* (land), yet, the Torah establishes this prohibition in reference to the transaction of lands and how their value is affected by *yovel*. The Torah introduces the command of *ona’a* in instructing buyers and sellers to set the price of land fairly, in consideration of the fact that land sales are only temporary, as lands in *Eretz Yisrael* return to their original owner on the jubilee year. It thus seems difficult to understand why the prohibition of *ona’a* would specifically not apply to *karka’ot*. As we saw, the Ramban proposed that the prohibition in fact does apply to land exchanges, and it is only in regard to some of the details (such as the revocation of the sale in certain instances) that the Mishna limits *ona’a* to *metaltelin*.

In concluding his discussion, however, the Ramban proposes a different theory. He alludes to the Gemara’s comment in Masekhet Kiddushin (42b) that one form of *ona’a* indeed applies even to *karka’ot* – namely, imprecise measurements. Lands sales are excluded only from the prohibition against overvaluing property beyond its market value. Given the permanence of real estate, a piece of land can never be truly overvalued, and thus it can be assumed that the buyer accepts the price despite its significantly exceeding market value. If, however, a party was given actual misinformation, such as about the size of the property, then the law of *ona’a* indeed applies, since nobody would accept a bad price determined based on misinformation. Therefore, the Ramban writes, the Torah introduces *ona’a* in the context of its discussion of *yovel* and how it affects the pricing of land, because unfair pricing of this type is indeed included in the *ona’a* prohibition. If the price is set according to a mistaken calculation of the years remaining until *yovel*, then this is akin to misinformation regarding the property’s size, and thus the resulting unfair price falls under the prohibition of *ona’a*. (This explanation is also given by Seforno.)

Interestingly, in presenting this theory, the Ramban writes that the Torah here forbids misleading the other party with regard to the number of years remaining until *yovel*, and he then adds, “Rather, they must both know and inform each other of the number.” The Ramban seems to understand the law of *ona’a* as not only forbidding one party from misleading the other, or taking advantage of the other’s lack of knowledge of the relevant information, but also requiring them to present this information to one another. It seems that in the Ramban’s view, it does not suffice to avoid misleading a buyer or seller, and they must be very clear and open with one another about the relevant “facts and figures” that affect the property’s value, to ensure that both are aware of the amount it is worth. (This observation is made by Rav Yitzchak Rokowsky in his *Imrei Yitzchak*, Parshat Behar.)

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