



Adapted from the sefer במוצאי שבת a collection of maamarim on
תנא דבי אליהו given by the Tolner Rebbe shlita at Melave Malka

Melave Malka Parshas Devarim 5759

In the Parsha, Moshe Rabeinu defines the duties of the Shoftim.
"ואצוה את שופטיכם בעת ההיא לאמור, שמוע בין אחיכם ושפטתם צדק בין איש ובין
אחיו ובין גרו." (On that occasion, I instructed your judges, saying "Listen to
your brothers and judge righteously between a man and his brother who
disputes him") (דברים א, ט"ז). The Ohr Hachaim Hakadosh asks, "Why did
Moshe Rabeinu find it necessary to command the Dayanim to listen? If
they don't listen to the arguments, how will they judge? Also, why does
he use the form שמוע, instead of שמעו?"

The next posuk contains two additional references to שמיעה.
"לא תכירו פנים במשפט, כקטן כגדול תשמעון לא תגורו מפני איש כי המשפט לאלוקים
הוא והדבר אשר יקשה מכם, תקרבון אלי ושמעתי"

It would seem more appropriate to use the verb for judging, תשפטו and
ושפטתיו, than the verb for listening, תשמעון and ושמעתי. The ultimate
task of the Dayan is to render judgement, not simply to listen.

I believe that the Torah is teaching us an essential lesson. While listening
to the litigants primarily enables judges to gather necessary information,
we should not ignore the importance of listening in and of itself. A true
Dayan knows how to listen to the baalei din, not simply with his ears but
with a heart that is a לב שומע (as Shlomo Hamelech requested from
Hashem "ונתת לעבדך לב שומע לשפוט את עמך"). He will try to understand
the context of the case. What led to this conflict between two Jews?
That understanding will enable him to solve the root of the conflict with
judgement, or by negotiating a compromise.



We must realize that the primary goal of the Torah's judicial system is not simply to judge cases fairly. The ultimate goal of משפט is to make peace between the two parties, and to help them rebuild their relationship.

The technical ability to judge a case correctly, depends on the memory and talent of the Dayan. Dealing with the case as the Torah desires, requires much more. Often, litigants only bring a case to Beis Din, because they weren't getting along beforehand. The Torah wants Dayanim to listen with their hearts, discern the true root of the conflict, and find a way to bring the two parties together in peace and harmony.

The verb שמוע as opposed to שמעו, alludes to a second meaning of the root שמע - to gather. In Shmuel Alef ("ט"ו,ד), the Navi describes Shaul Hamelech gathering the people with the words, "וישמע שאול את העם". In our posuk, the word שמוע emphasizes the Dayanim's obligation to bring the litigants together, by healing the rift that divides them. Dovid Hamelech says, "משפטי השם אמת צדקו יחדיו". The goal of the Dayanim has to be, "יחדיו" (togetherness), bringing the two opponents together, by listening to them, and speaking to them, until they put the hatred and machlokes behind them. Successful judgement will result in the two litigants walking out of the Beis Din as if they had never argued.

Anyone with a bit of experience in the world of Batei Din knows that many baalei din don't walk into Beis Din hoping to ascertain what the Torah truly demands of them. They come driven by their Yetzer Hora of hatred, Ayin Hora, and the need to always defeat their adversary. Anyone who has dealt with cases of Choshen Mishpat (monetary law), knows that the most respectable people refuse to forego even one penny in a Din Torah. Surprisingly, those same people willingly undergo much larger financial losses in order to avoid a transgression of איסור והיתר such as non-kosher food, or chametz on Pesach. This inconsistency stems from עין צרות, an inability to tolerate the success of others.



[2]

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The Gerrer Rebbe, the Imrei Emes זיע"א, told his son, the Pnei Menachem, זיע"א, about his visit to משה קלערס זצ"ל, the Av Beis Din of Teveria. The Imrei Emes asked the Rav about the youth of Teveira. It was a very difficult period, and many young people were abandoning Torah observance. R. Moshe sighed deeply and said, "I have no טענות (complaints) about the young people, their yetzer hora burns so intensely. However, what can I say about Chasidishe Yiden who daven Nishmas with great intensity, and are found guilty in my Beis Din of the most disgusting monetary transgressions.

The Imrei Emes responded that this is exactly what the Gemara meant when it said, רובם בגזל (Most of them are guilty of theft). The word רובם is not just quantitative, but also qualitative. The Ibn Ezra, explains that the phrase in Megilas Eicha, רבתי בגוים, refers to the stature of the Jewish people. When Chazal said רובם בגזל, they meant that even the greatest among them are guilty of this terrible aveira.

The need to truly hear others applies not only to Dayanim, but to each and every person. Just listening to your friend's problems, even when you have no practical way to solve them, is a great chesed. Chazal understood Shlomo Hamelech's instruction, (משלי י"ב, כ"ה), דאגה בלב איש, to mean ישיחנה לאחרים. (If your heart is troubled, speak about your troubles with others). When someone keeps his troubles "bottled up", his suffering increases. The very act of discussing troubles with a friend who truly listens, provides significant relief.

I repeatedly remind people that every person is a "Dayan" in their own home and community. We are often called upon to mediate disagreements and help others reach a compromise. Like the Dayanim in Beis Din, we do not fulfill our obligation by simply rendering a decision. We have to listen to both sides, and speak to them in a way that will restore their relationship of love and happiness.



[3]

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During the weeks of Bein Hametzarim, we must focus on bringing peace, and developing אהבת חינום. Chazal, in Maseches Yoma, state that the second Beis Hamikdash was destroyed because of שנאת חינום. The more we increase אהבת חינום, and devote ourselves to chesed and peacemaking, the closer we will be to the גאולה השלימה.

Today is the Yohrzheit of the Ari Hakadosh. In Shaar Hakavanos (דרושי ברכות השחר), and in (הקדמה ל"ח), שער הגלגולים, we find the following instructions. "My master warned me, and all of the chaveirim in our group, to accept upon ourselves the mitzva of ואהבת לרעך כמוך, each day before Shacharis, with the intention to love every Jew as ourselves. By doing this, our tefilla will be included in the tefillos of all Am Yisroel and will go up and accomplish tikkun above. He specifically emphasized the need for אהבת חברים, within our group, to the extent that each chaver will view himself as a limb of the body which is made up of all the chaveirim. If chas v'shalom, one of the chaveirim experiences a tzara, or if one of his family is sick, each chaver must empathize with his suffering, and daven for him. Each chaver should have all of the chaveirim in each of his endeavors."

In order to succeed we must internalize the attribute of "Ayin Tova". The more Ayin Tova we have, the more we will love others, "hear" their thoughts and feelings, and help them to be best of our ability. Someone who חלילה, does not have Ayin Tova, won't even be aware of others' suffering and certainly won't be able to help them.

Once, during Bein Hametzarim, someone asked the Gerrer Rebbe, the Pnei Menachem זיע"א, what practical steps he should take in order to develop Ayin Tova. The Rebbe told him to try, at least once a week, to look at another with Ayin Tova, seeing only the good in that person. He instructed him to keep a cheshbon, ensuring that he remains consistent, and then progress to practicing Ayin Tova two or three times a week. Eventually, it should be possible for Ayin Tova to become second nature.



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If we will be wise enough to acquire the mida of Ayin Tova, and the לב שומע, that results, we will אי"ה, merit the Geula Hashleima, and the fulfillment of the posuk, (ישעיהו נ"א, ג)

"כי נחם ה' ציון, נחם כל חרבותיה, וישם מדברה כעדן וערבתה כגן ה'. ששון ושמחה ימצא בה, תודה וקול זמרה." בעגלא דידן ובזמן קריב אכי"ר."



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