

Parsha Encounters

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Parshas Behar - Rabbi Aaron Rokach

Making Time

In this week's Parsha, Shmita is referred to as "Shabbos L'Hashem" – a resting period to Hashem (*Vayikra* 25:2). With regard to Yovel, the pasuk states: "Kodesh Tiyeh L'chem" – it shall be holy to you (*Vayikra* 25:12). Why is it that Shmita is considered L'Hashem, to Hashem, while Yovel is considered L'chem, to you?

To answer this question, the Meshech Chochma begins by pointing out that the same language appears in the psukim discussing Shabbos and Yom Tov. Shabbos is called "Shabbos L'Hashem" – a resting period to Hashem (*Shemos* 20:10), while Yomim Tovim are described as "Mikra Kodesh Tiyeh L'chem" – holy to you (*Vayikra* 23). This refers to a basic difference between Shabbos and Yom Tov. Shabbos has a set time, once every 7 days, while the time of Yom Tov depends on when Beis Din sets the new month. Because the time of Shabbos is determined by Hashem, it is attributed "to Hashem." The time of Yom Tov is determined by Klal Yisroel so it is attributed "to you." In this regard, Shmita is similar to Shabbos and Yovel is similar to Yom Tov. Although the occurrence of Shmita once every seven years is set by Hashem, the Meshech Chochmah points out that Yovel depends on Klal Yisroel. If the laws of Yovel (such as the freeing of slaves and blowing the Shofar) aren't observed, Yovel doesn't take place. Therefore, Shmita is considered "to Hashem" and Yovel "to you."

The Meshech Chochma adds that this distinction between Shabbos and Shmita on one hand and Yom Tov and Yovel on the other is based upon the different concepts that they commemorate. Yom Tov is a zecher for Yetzias Mitzraim, as is Yovel since it includes the freeing of slaves. Shabbos and Shmita, which occur in intervals of seven, are both a zecher for Shabbos Bereishis, when Hashem created the world in six days and "rested" on the seventh. But, the Meshech Chochma does not explain why it is that being a zecher for Shabbos Bereishis corresponds to having a time set

by Hashem and being a zecher for Yetzias Mitzraim corresponds to having a time set by Klal Yisroel. What is the reason for this?

The Sefer Hachinuch explains that the primary purpose, and culmination, of Yetzias Mitzraim was Kabolat HaTorah, where Klal Yisroel was designated as the Nation of Hashem. Yetzias Mitzraim was not merely a release from slavery, but a transition from being slaves of the Egyptians to being Avdei Hashem. This idea is also present in the freeing of slaves on Yovel. Later on in this week's Parsha, the pasuk states: "And [the slaves] shall go out... for they are My servants who I redeemed from Mitzraim" (*Vayikra* 25:42). The slaves are not merely freed from bondage; they are freed in order to be Avdai Hashem, just like Yetzias Mitzraim.

This is perhaps the reason for the Meshech Chochma's connection between what each holiday commemorates and who sets its time. Since Yom Tov and Yovel commemorate Klal Yisroel's becoming the Am Hashem through Yetzias Mitzraim, it is appropriate that Klal Yisroel exercise its authority as the Am Hashem to set the times of these occasions. Shabbos and Shmita, however, which commemorate the fact that Hashem created the world, have their times determined solely by Hashem.

This idea is further illustrated by the Gemorah in Beitzah. The Gemorah mentions that when Yom Tov and Shabbos are on the same day the brocho in Shemona Esrei is: "Mekadesh HaShabbos V'Yisroel V'Hazmanim" Hashem sanctifies Shabbos, Klal Yisroel, and Yom Tov. The Gemora explains that because Shabbos is sanctified by Hashem Himself, we first bless Hashem for sanctifying Shabbos, then for sanctifying Klal Yisroel, who in turn have the authority to sanctify Yom Tov.

Rabbi Rokach learns night seder at the kollel.

THIS ISSUE OF PARSHA ENCOUNTERS IS DEDICATED
BY RABBI AND MRS. MOISHE DAVIS

WISHING A MAZAL TOV TO THE LANGER FAMILY ON THE BIRTH OF THEIR BABY BOY.

Halacha Encounters

Taking Advantage

Rabbi Zvi Feiner

In Parshas Behar, the Torah states: “When you make a sale to your fellow or make a purchase from the hand of your fellow, do not aggrieve one another.” (Vayikra 25:14) With this pasuk, the Torah forbids a seller to overcharge and a buyer to underpay in the course of a business transaction. This is known as the prohibition of *ona'ah*, taking advantage.

The Gemara (Bava Metziah 61a) compares the prohibition of *ona'ah* to outright stealing, for in both cases a person is taking money or possessions that are not rightfully his.

Though it is forbidden to deceive or mislead anyone, Jew or gentile, the prohibition of *ona'ah* is limited to transactions between two Jews. This is deduced from the words of the pasuk, “*Ish Es Achiv*”. (Sefer HaChinuch Mitzvah 337, Choshen Mishpat 227:26)

The prohibition of *ona'ah* is not limited to buying and selling and applies to rentals and hiring workers as well. (Choshen Mishpat 227:1 see SM”A there)

The definition of overcharging and underpaying was established by Chazal as a deviation of 1/6 (16.66%) of the market value. (ibid. 2, 3) If one charges 16.66% more or pays 16.66% less than the market value, it is considered *ona'ah*. According to the Rosh, although Chazal did not institute any recourse when the deviation is less than 1/6, the prohibition of *ona'ah* still applies. (Ibid. 6 see SM”A ibid. 14) Conversely, in situations where the *ona'ah* was unintentional, the ordinary course of action applies, but one does not transgress the prohibition of *ona'ah* (Ramban Vayikra 25:12, Sefer HaChinuch 337)

When a transaction involves *ona'ah* of more than 1/6 of the market price, the sale is void and the wronged party may demand that the sale be completely cancelled. Similarly, the offender may choose to void the sale rather than simply adjusting the price. (Choshen Mishpat 227:4) However, there is a “statute of limitations” limiting the wronged party’s claim to the time it ordinarily takes to investigate the true market price, which is usually only a few hours after the transaction takes place. (Choshen Mishpat 227:7) If

the deviation in price was exactly 1/6 of the market value of the item, the sale is still valid and the wronged party can only demand compensation for the difference in price. In today’s marketplace this is quite uncommon since there are price variations among merchants for the same item. (Mishpitei Torah 2:3)

It should be noted that *ona'ah* is determined by the “market” price and not by the intrinsic monetary value of the item. There is no prohibition that prevents a merchant from making a profit, as long as it is “in line” with market pricing. (Mishpitei Torah 2:1)

Exceptions

Items that have no “fixed” objective price are not subject to *ona'ah*. For example, lulavim or esrogim used for Succos whose values are based on their perceived quality and appearance are not subject to *ona'ah*. Similarly, antiques and collectibles would not be subject to *ona'ah*. (Mishpitei Torah 2:4) Additionally, items sold through auction or bartering are not subject to *ona'ah*. (ibid.)

The laws of *ona'ah* do not apply to real estate (O.C. Choshen Mishpat 227:29), though some Rishonim limit this to a deviation of no more than twice the market value (100%). Most Poskim are of the opinion that even the prohibition of *ona'ah* does not apply to real estate. However, the Ramban and Sefer HaChinuch (ibid.) say that although the transaction is valid and there is no monetary claim for compensation, the prohibition of *ona'ah* still applies. As always, one should consult his Rav in determining both the permissibility and any required monetary compensation for any given case.

One way to avoid any question of *ona'ah* is for both parties to explicitly agree to the price with the understanding that it may differ significantly from the market price.

Rabbi Feiner is a magid shiur at the kollel.

Parsha Encounters is coordinated by Rabbi Yisroel Langer. To dedicate an issue, call the kollel office at (773)262-9400