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PARASHAT HASHAVUA

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PARASHAT KI TETZE

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**Practical Mitzvot**

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**Unloading and Loading: On the Road<sup>1</sup>**

You shall not see your brother's donkey or his ox fall down by the way and hide yourself from them; you shall surely help him to lift them up again. (*Devarim* 22:4)

Rambam writes (*Hilkhot Rotze'ach* 13:1-2):

Someone who encounters someone else on the road whose animal has fallen under its load is commanded to unload the burden from it, whether the load was one that the animal was capable of carrying or whether it was greater than it could bear. This is a positive commandment, as it is written, "[If you see the donkey of him that hates you lying under its burden, and would forbear to unload it,] you shall surely unload it with him" (*Shemot* 23:5). And he should not unload the animal and then depart, leaving [the owner] at a loss. Instead, he should lift the animal together with [the owner] and reload the animal's burden, as it is written, "You shall not see the your brother's donkey or his ox fall down by the way and hide yourself from them; [you shall surely help him to lift them up again]."

Further elaboration is provided by the Arukh Ha-shulchan (*CM* 272:8):

In our region, where it is customary to travel and to transport loads in a wagon, the horse being harnessed to the wagon, if one encounters a wagon that has become mired in mud and muck, he is obligated to help the wagoner to unload the goods and to pull the wagon and the horse out to a dry place. This is the mitzva of unloading. Afterwards he must reload it properly, and likewise if the load fell from the wagon then he is obligated to help [the wagoner] to reload; this is the mitzva of loading. Likewise if a wheel of the wagon has broken, he is obligated to help fix it, as far as possible, and to accompany him for a short distance, to see that it now drives smoothly – and this is also part of the *mitzvot* of unloading and loading.

Many people think that this mitzva is dictated by the suffering of the animal that is collapsing under its load, but the question of whether *tza'ar ba'alei chayim* (the prohibition of causing suffering to animals) is of biblical origin is a matter of debate among the Tanna'im and the commentators (*Bava Metzia* 32a-33a). It merely arises as a factor in unloading, in addition to the considerations of loading (as explained in the passage). The main reason for the mitzva is, of course, the human suffering

involved (see Rambam, *ibid.* 13:9) and the anguish over financial loss. Rambam deals with these *mitzvot* in the section dedicated to the laws of homicide and human safety, because a person who finds himself in such a situation may endanger his life through rash decisions and acts. This also explains the conclusion of the Arukh Ha-shulchan that the *mitzvot* also apply to horse-drawn wagons, and even to a broken wagon-wheel. The Torah is concerned principally for the wagoner, not (or not only) for the horse or donkey. Hence we conclude that the *mitzvot* of unloading and loading also apply to vehicles that are stuck on the side of the road, not only to a truck that has overturned, scattering its load; it applies also to a flat tire, an overheated engine, an empty gas-tank and many other road troubles.

What are the conditions that obligate a driver to stop and help another driver? First and foremost, there is the question of loss and compensation. A passing driver who stops on the side of the road to help loses time; sometimes it is work time, and he may even lose his job.

Here lies the difference between unloading and loading. The discussion in the Gemara concludes that the Torah obligates one to help unload for free, but he must be compensated for loading. The Rishonim are divided as to what this means in practice: Rosh asserts that the unloading is undertaken for free only if the person who stops to help is not working at the time; if he is working, he receives partial compensation, as in the case of returning lost property (see *CM* 265). Loading with compensation, on the other hand, means full compensation, if the owner of the load is willing to pay – but the Torah obligates the passerby to stop and offer to reload for payment. This represents the ruling of the Tur and the Shulchan Arukh (*CM* 272:6). However, Ran understands the stipulation of unloading for free as meaning completely and unconditionally for free, while loading with repayment is as in the case of returning a lost article, when there is partial repayment if the item is lost. The halakhic authorities rule in accordance with Rosh, but a person who is God-fearing and morally sensitive should conduct himself in accordance with Ran's understanding. In practice, it seems that the practical obligations are as follows:

1. A driver who encounters another driver who is stuck on the road for whatever reason is obligated by the Torah to stop and to offer whatever urgent help is required, and, of course, to report the accident to the authorities (as he is obligated to report any obstacle or danger on the road). This is also required by Israeli law.
2. Urgent help includes calling for emergency medical services and the police, as necessary; help in evacuating injured parties as necessary; and making contact with a towing company and/or taking the driver to a place where he will be able to make calls and deal with his situation. Throughout this stage, assistance is to be offered completely for free, as dictated by the prohibition, "You shall not stand idly by the blood of your neighbor" (*Vayikra* 19:16).
3. If a small repair is needed quickly and the passerby is able to help, he must help for free if he is not working and he will not lose anything by it. If he is working and the interruption will cause him a loss (for instance, a taxi driver), he may make his help conditional on monetary compensation. If the driver who is stuck states that he can manage on his own and does not need help, one may continue on one's journey, but should be sure that

<sup>1</sup> See "*Kitzur Hilkhot Derakhim*" on my website (Halakha articles) and further elaboration in *Mikraot Le-farshat Mishpatim*, to be published shortly.

the driver is not just saying this to be polite, while in fact he is in real trouble.

4. If the driver requires help that involves more significant time, effort, and/or professional skill, and the passerby is able to assist, then he is entitled to proper compensation, and an agreement should be made **before** he starts work as to how much he will be paid. However, if he requests payment only **after** carrying out the repair, he can demand partial compensation only for the time or work. Obviously, proper compensation means whatever is appropriate for the work done, without exploiting the predicament of the driver to demand an exorbitant price.
5. After the repair, the helper must accompany the vehicle that he fixed for about 5km (a *parsa* in the language of *Chazal, Bava Metzia* 33a) to ensure that the car is now running as it should. One may accept full compensation for this accompaniment.
6. A driver who sees a car stopped on the side of the road from a distance of about 150m is already obligated to stop and offer urgent help or assistance, as set forth above.
7. If the driver who is stuck is not prepared to exert any effort himself, one is exempt from helping him; but if he is elderly or unwell, then one is obligated to help him.
8. If the person who drives by is a distinguished figure and it is not dignified for him to help with repairs, he is exempt, except in urgent circumstances, which obligate everyone. This exemption applies only when the distinguished personage would not engage in repairs of his own car. If he would change a tire on his own car, then he is obligated to do so also for someone else (CM 272:3). It is praiseworthy to go beyond the letter of the law and to help others always, even if he is the president, the prime minister, a senior judge or a well-known rabbi.
9. If a driver stops next to someone and asks for urgent help, one is obligated to help him. If he asks for information or directions, they should be provided briefly and clearly; it is forbidden to mislead him. If one is unsure of the directions he needs, one should say so clearly; one must not give people questionable information (in this as in other circumstances).

Members of a group that sets out together on foot or in a vehicle are obligated towards one another. If one of them walks slowly or experiences difficulty with the hike or problems with his car, the others may not simply overtake him and leave him behind. The group must proceed at the speed of its weakest members. A hiking guide or the leading car must stop from time to time and check on the stragglers. (See *Me'irat Enayim*, CM 272:20, concerning mutual responsibility amongst "a group of people on the way... since they assembled in order to go together.")

If one (or some) of the group is entirely unable to continue, **two** others must stay behind to help him, along with water, food and some means of communication (when possible). As soon as the rest of the group reaches a place where help may be sought, their first obligation is to take care of evacuating the hikers who are stuck.

### The Fugitive Slave

You shall not deliver to his master a slave who has escaped from his master to you; he shall dwell with you, among you, in that place which he shall choose in one of

your gates, where it suits him; you shall not oppress him. (*Devarim* 23:16-17)<sup>2</sup>

In the legal codes of the Ancient Near East<sup>3</sup> we find a categorical obligation to deliver escaped slaves to their masters, and the death sentence is prescribed for anyone who offers them refuge. Thus, this mitzva represents a critical difference between the laws of the Ancient Near East<sup>4</sup> and the Torah, in relation to slavery.

It is easy to understand that the institution of slavery can hardly exist in the absence of legal protection for the property of a slave-owner, and this requires that escaped slaves be handed over. Owing to the critical importance of this principle, let us look at some examples taken from laws of the Ancient Near East:

- a. A maidservant or manservant [who escaped], crossing the boundary of his city, and a[nother] man returned him – the master of the slave shall weigh out two shekels of silver for the man who returned him.<sup>5</sup>
- b. A maidservant or manservant who flees into the heart of the city, and it is proven that he dwelled in the house of a[nother] man for a month – he [who gave refuge] shall repay a head for a head.<sup>6</sup>
- c. A manservant or maidservant of [a citizen of] Eshnunna, who bears a collar, chains or a slave's haircut, shall not exit the gate of Eshnunna without his master. If the governor or any person of authority catches a fugitive manservant or maidservant, or a lost ox or a lost donkey, and does not return [them] to Eshnunna, but keeps them in his own house for longer than a month – he is to be judged for theft.<sup>7</sup>
- d. If a manservant or maidservant exits the city gates, he shall be put to death (!); if a manservant or maidservant flees and [someone] hides him in his house and does not hand them over at the herald's proclamation – that homeowner shall be put to death (!). If a manservant or maidservant flees and [someone] catches him in the field, and brings him to his master, the slave's master shall pay him two shekels of silver. If the slave flees from him who caught him, that man shall swear [a religious oath] to the master of the slave, and shall be guiltless.<sup>8</sup>
- e. If a slave flees and someone returns him, if he caught him somewhere nearby, [the owner] shall give him shoes; if [he caught him] on the same side of the river – [the owner] shall pay him two shekels of silver; if on the other side of the river – he shall pay him three shekels of silver. If a slave flees to a different land, [the owner] shall pay six shekels of silver to whoever returns him. If the

<sup>2</sup> Based on *Mikraot Le-farashat Mishpatim*, to be published shortly.

<sup>3</sup> I rely here on the thorough study by Meir Malul, *Kovtzei Ha-dinim Ve-osafim Mishpati'im Acherim min Ha-mizrach Ha-kadum* (Haifa, 2010), but in a few places I have translated the sources slightly differently, especially when biblical verb forms and biblical sentence structure are involved, since they are very different from the Mesopotamian sources. The parenthetical comments are mine.

<sup>4</sup> Ramban, in his commentary on *Bereishit* 34:13, defines the *mitzvot* that are *dinim* (laws) for the sons of Noah; these are similar to the laws set down in *Parashat Mishpatim*, and this explains the points of similarity between the laws of the Torah and the laws of the Ancient Near East. However, the differences are what make the Torah of Moshe unique, as opposed to both the Noahide laws and the laws that were observed during the time of the Patriarchs.

<sup>5</sup> Code of Ur-Nammu (Sumer), section 17 (Malul, *Kovtzei Ha-dinim*, p. 51).

<sup>6</sup> Code of Lipit-Ishtar (Sumer), section 12 (Malul, *Kovtzei Ha-dinim*, p. 67).

<sup>7</sup> Laws of Eshnunna (Akkad), sections 50-51 (Malul, *Kovtzei Ha-dinim*, p. 97).

<sup>8</sup> Hammurabi Code (Babylonia), sections 15-20 (Malul, *Kovtzei Ha-dinim*, pp. 113-114).

slave flees to an enemy land, whoever returns him shall take [the slave] for himself.<sup>9</sup>

- f. If [a man] cuts the hair of a slave that is not his own, without [the permission of] his master, the hand of that barber shall be cut off.<sup>10</sup>
- g. If a man bought the manservant or maidservant of someone in a foreign land, and the master or the manservant or maidservant recognizes his manservant or maidservant as they are transported in the land, if the manservant or maidservant is native to the land – he shall be freed, with no compensation [however, according to the second clause, he is to be returned to the lawful master, with no money changing hands]; [but] if [the manservant or maidservant] is of the foreign land, the master of the manservant or maidservant shall pay the merchant the sum that he paid for him, and redeem his manservant or maidservant.<sup>11</sup>

Common to these various Ancient Near Eastern legal codes are the following elements: the obligation to hand over a slave who has escaped; a harsh punishment for anyone offering him refuge; a fixed reward for returning him; the duty to return a slave to his original master even when a slave is freed from a sale abroad.

### From Ancient Near East to Pre-modern West: *Uncle Tom's Cabin*

One of the leaders of the radical struggle to eradicate slavery in America was Henry Ward Beecher. His father, too, had been a social activist, especially focused on combatting drunkenness. His sister, Harriet Beecher Stowe, is the famous author of *Uncle Tom's Cabin*<sup>12</sup> – a novel that mobilized the general public against slavery more effectively than any political or religious leader.

A rereading of the story from a Torah perspective offers some fundamental insights. One pertains directly to the Torah's prohibition of handing over a slave to his master. It must be remembered that up until the American Civil War, the Missouri Compromise (1851) had established the obligation of handing over any slave who fled from the Southern states to the North. Although the North was against slavery, the Northern states agreed to hand over fugitive slaves because the South could not accept the North as a reliable refuge for escaped slaves.

The fear of being handed over occupies a central place in *Uncle Tom's Cabin*. The maid who flees with her young child before he can be taken from her for auction endangers her own life several times in her attempts to evade her pursuers, who have been paid in advance to hunt the fugitives – and, especially, the child. The wife of the senator who is fighting to impose harsher punishment on those offering refuge to escaped slaves forces her

<sup>9</sup> Hittite Laws, sections 22-23 (Malul, *Kovtzei Ha-dinim*, p. 233)

<sup>10</sup> Hammurabi Code, section 226 (Malul, *Kovtzei Ha-dinim*, p. 160). Obviously, this haircut would help the slave to escape, making it difficult to identify, capture and deliver him. Hence, the barber is considered an accomplice to the slave's escape.

<sup>11</sup> Hammurabi Code, sections 280-281 (Malul, *Kovtzei Ha-dinim*, p. 168).

<sup>12</sup> Originally published in an American newspaper in 40 chapters, starting in June 1851, it eventually became an international bestseller. In response to arguments in support of slavery claiming that the book was not based on facts, the author published an index (in 1853), presenting the documents and facts upon which the book was based. In 1862, legend has it, President Lincoln met Harriet Beecher Stowe and called her "the little woman who started this great war". (His statement aside, the Civil War originally broke out not over the issue of slavery, but rather as a result of military provocation by the Southern states and the danger of secession.)

husband to shelter the woman and her child for a few hours, but he quickly moves them on elsewhere, so as not to be found out. All the temporary shelters offered by kind-hearted individuals and the assistance extended by Quakers are not enough; it is only through subterfuge that the mother and child manage to reach Canada, where slavery had been already outlawed by this time. There the family is reunited and a new life of freedom, work and education begins.

The critical differences in Torah law concerning slaves lie in the freedom that a [non-Hebrew] slave earns in the event of grave bodily injury and punishment if a slave dies at his master's hands (*Shemot* 21:20-21; 26-27), and – even more so – in the unique prohibition of handing over "a slave who has escaped from his master to you." These laws have no parallel in any Ancient Near Eastern code, and represent the unique moral position of the Torah on slavery.

### Interest in Modern Economies: A Bank Is not "Your Brother"<sup>13</sup>

You shall not take interest from your brother: interest of money, interest of foodstuffs, interest of anything that is lent upon interest. To a stranger you may charge interest, but to your brother you shall not charge interest, so that the Lord your God may bless you in all that you set your hand to in the land into which you go to possess it. (*Devarim* 23:20-21)

The Torah verses setting down the prohibition of interest emphasize the fraternal context: you may not impose interest on "your brother," on "the poor among you" (*Shemot* 22:24), while interest is explicitly permitted when non-Jews are concerned. This indicates that interest is not an absolute moral prohibition, like theft, but rather a special kindness or consideration shown to Jews, by virtue of the Exodus. This distinction is of critical importance in the modern economic world, when a "*heter iska*" becomes a necessity in order to work with banks and credit companies. However, no such license can be extended to individuals, as the Torah prohibits interest on the private level.

Let us first review the relevant verses from *Sefer Shemot* and *Sefer Vayikra*:

If you lend money to any of My people that is poor among you, you shall not be to him as a creditor, neither shall you lay upon him interest... And it shall come to pass, when he cries to Me, that I will hear, for I am gracious. (*Shemot* 22:24)

And if your brother grows poor, and his means fail with you, then you shall relieve him... Take no interest of him, or increase, but fear your God, that your brother may live with you. You shall not give him your money upon interest, nor lend him your foodstuffs for increase. I am the Lord your God, Who brought you out of the land of Egypt, to give you the land of Kena'an, and to be your God. (*Vayikra* 25:35-38)

Rambam (*Hilkhos Malveh* 4:7) rules, following *Bava Metzia* 61b:

<sup>13</sup> From *Mikraot Le-farashat Mishpatim*, due for publication shortly. For positions different from mine, see articles by Rav Ya'akov Ariel, "*Le-achikha lo tashikh*" (*Ha-tzofeh*, 29 Menachem-Av 5764); "*Ha-bankim Ve-achrayutam Ha-musarit*" (ibid. 19 Tishrei 5765); "*Ha-ribit, Ha-kalkala Ve-hamusar*" (ibid. 14 Marcheshvan 5765); and Rav Daniel Wolf, "*Ribit, Musar U-ma'aseh*" (ibid. 19 Marcheshvan 5765). (A summary of the different opinions may be found on the Wikitext website under the heading, "*Biur: Heter Iska Me-hatzofeh*".)

If anyone writes a promissory note with interest, it is as if he documents and has witnesses testify that he denies the Lord God of Israel. Likewise, anyone who borrows or lends money with interest in private is considered as denying the Lord God of Israel and as denying the Exodus from Egypt, as it is written, "You shall not give him your money upon interest... I am the Lord your God, Who brought you out of the land of Egypt..."

Ramban, in his commentary on *Devarim* 23:20, explains:

The text here [in *Sefer Devarim*] adds a prohibition [on interest] that applies to the borrower, too, which is unparalleled in all the monetary laws... because of the ubiquitous nature of this transgression... This tells us that imposing interest on a non-Jew is permissible – a distinction that is not mentioned in relation to robbery or theft, as our Sages teach (*Bava Kama* 113b): "Stealing from a non-Jew is forbidden;" but interest, if agreed upon by both parties of their free will, is prohibited only on the basis of fraternity and love... Therefore the text concludes with the words, "So that the Lord your God may bless you" – for a person performs kindness and mercy towards his brother when he gives him a loan without interest, and this is considered an act of *tzedaka*... For the text mentions [divine] blessing only in connection with *tzedaka* and kindness, not in connection with [refraining from] robbery, stealing, and deceit...

This is the biblical point of departure for the modern halakhic discussion of the *heter iska* used by banks and credit companies. Several points should be emphasized in this regard:

Firstly, a bank does not fall under the definition of "your brother" when *tzedaka* is concerned. The prohibitions on interest are defined explicitly by Ramban as applications of *tzedaka*, applying only among Jew by virtue of the Exodus from Egypt, there is no universal moral prohibition attached to the idea of charging interest, and therefore these prohibitions do not apply when money is lent to non-Jews.

This indicates the clear connection between Halakha and morality, specifically in relation to interest. Every Jew is obligated in matters of *tzedaka* and is prohibited from charging interest by virtue of the Exodus; therefore, any interest-bearing transaction carried out between Jews is considered a denial of the Exodus. However, the directorate of a bank cannot treat bank capital as charity (although there are legitimate expenses involved in advertising and public relations). In this regard a bank is different from a kibbutz, or even from a regular for-profit company.

A bank operates according to global economic logic, in accordance with rules and principles which cannot distinguish between Jews and non-Jews. Therefore, a bank's capital is not considered "your money," but rather "the money of others," to borrow *Chazal's* term from *Torat Kohanim* on *Parashat Behar* (76). We must also consider the probability that the shareholders include non-Jews, and all of this collectively offers a strong basis for the *heter iska*.

A second point is that a bank, as a limited company, is not considered a known owner. The shareholders, who own the bank's assets, are not personally obligated in any regard concerning the bank. Therefore, when a bank extends a loan there is no concrete lender, nor any concrete borrower of money deposited.

This diminishes the claim of absolute responsibility to repay loans as raised by the halakhic authorities (*Responsa Maharsham* I, ch. 20) as a reason for the prohibition. Other major halakhic authorities have depicted bank activity as being similar to a community in which there are no known (i.e., defined) owners. Rav Moshe Feinstein agrees with this characterization with regard to banks (*Iggerot Moshe*, *YD* II 63), but finds no solution for actual individuals who take loans from the bank – i.e., bank clients.

However, the fact that a bank is a limited company is not sufficient grounds to assert that the prohibition against interest does not apply, because the clients are defined, known people, and – if we are speaking of an Israeli bank – mostly Jewish. Nonetheless, major halakhic authorities have noted certain other characteristics which collectively offer grounds for leniency when it comes to banks and credit companies.

One such argument is that a bank lien is a virtual one – unlike the personal lien that is at the heart of the prohibitions on interest in the Torah.<sup>14</sup> In the words of the Gaon of Rogachev, a bank lien is one of "form rather than content," and therefore the Torah's prohibitions on interest do not apply. He therefore permits a bank to charge and pay interest (*Responsa Tzafnat Pane'ach* 184).

Other halakhic authorities (such as Maharsham, *ibid.*) disagree with the Gaon of Rogachev and others who are inclined to permit bank interest for similar reasons (such as, for example, *Responsa Maharia Ha-Levi Ettinger*, 2:54), because some real lien remains. However, the opinions of those who permit bank interest support the assertion that in any event banks are not biblically prohibited, and the *heter iska* is a legitimate response to *Chazal's* extension of the prohibition.

According to the above analysis it is not hard to resolve the difficulty raised by Rav Moshe Feinstein (*ibid.*) concerning borrowers (bank clients) whose responsibility is not limited and who are known owners; in his view, the borrowers violate the prohibition even if the bank, which lends the money, is not in violation. The resolution lies in the fact that the biblical source for the prohibition applying to the lender is the verse "But to your brother you shall not charge interest" (*Devarim* 23:20; Rambam, *Hilkhot Malveh* 4:2). However, a bank is not "your brother," such that the lender is not receiving interest from his brother.

All opinions agree that anyone who is not involved in the loan does not violate the prohibition of "You shall not place a stumbling block before the blind", since the bank has a *heter iska* and relies on it.

Rav Shlomo Zalman Auerbach opposes a *heter iska* which is based on the idea that a bank is not a known owner. He pointed out that while an *aris* (sharecropper) is not an owner, the laws of interest nevertheless apply to him (*Responsa Minchat Shelomo* 1:28). However, this point, too, is easily resolved, since an *aris* who is Jewish falls under the category of "your brother," while a bank does not.

Clearly, the license for banks to deal in interest is dependent on the *heter iska* that is universally used, but the halakhic basis for the *heter* rests upon the fact that strictly speaking, the biblical prohibitions on interest do not apply to banks and credit companies. The *heter iska* does not in any way cancel the grave prohibition set down in the Torah; rather, it responds to *Chazal's* extension of this prohibition. This is why

<sup>14</sup> As we see in the story of the widow and the prophet Elisha: "Your servant, my husband, died... and the creditor has come to take my two children to be his slaves" (*Melakhim II* 4:1).

Jewish society relies on the *heter iska* – justifiably – as a matter of routine.

Hence, loans governed by the *heter iska* should be permitted only for banks and credit companies; they are under no circumstances permissible for individuals, who are bound by the biblical prohibition which cannot be cancelled by any *heter*. Among individuals, all the biblical prohibitions on interest apply according to the letter of the law. Every Jew who is able to give charity should extend interest-free loans to one or two needy individuals, with repayments set in accordance with the recipients' ability. This then shall be considered *tzedaka* on his part.

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