

Zera Shimshon

by Rabbi Shimshon Chaim Nachmani zt"l

Published Mantua 1778*

Chapter XVIII: Mishpatim (Ex. 21:1–24:18)

Essay 7. A bribe versus compensation for lost employment

פְּסוּק "וְשֹׁחַד לֹא תִקַּח כִּי הַשֹּׁחַד יְעוֹר פְּקוּחִים". מֵאֵי שְׂנָא הֵכָא דְכְתִיב "יְעוֹר פְּקוּחִים", וּמֵאֵי שְׂנָא הֵתָם בְּפִרְשֵׁת שׁוֹפְטִים דְכְתִיב "כִּי הַשֹּׁחַד יְעוֹר עֵינֵי חֲכָמִים", וְעוֹד הֵכָא קְאָמַר "וְשֹׁחַד לֹא תִקַּח" וְהֵתָם "לֹא-תִקַּח שֹׁחַד"?

There is a verse: **“Bribes you shall not take, for bribes blind the clear-sighted and upset the pleas of those who are in the right”** (Ex. 23:8). **What is the difference between here, where it is written, “bribes blind the clear-sighted,” and there in parshat Shoftim, where it is written, “for bribes blind the eyes of the wise”** (Deut. 16:19), **and also why here is it said, “bribes you shall not take,” but there it says, “do not take bribes”?**

וְגַרְסִינוּ בְּפֶרֶק בְּתָרָא דְכְתוּבוֹת (דף ק"ה) וְקָרְנָא הֵיכִי עֵבִיד הֵכִי? וְהֵכִיב וְכוּ? וְתַרְצוּ שֵׁם בְּגִמְרָא קָרְנָא שְׂכָר בְּטָלָה הֵנָּה נוֹטֵל. וְאִגְר בְּטָלָה מִי שְׂרִי? וְהֵתְנָא: מְכוּעֵר הַדְּיִין שְׁנוּטֵל שְׂכָר לְדוֹן, אֲלֵא שְׂדִינּוּ דִין. הֵיכִי דְמִי? אִי לִימָא וְכוּ' וְהֵתְנּוּ וְכוּ' אֲלֵא 'אִגְר בְּטָלָה', וְקָתְנִי: מְכוּעֵר הַדְּיִין. הֵנִי מִלִּי בְּטָלָה דְלֵא מוֹכְחָא, קָרְנָא, בְּטָלָה דְמוֹכְחָא הֵנָּה שְׂקִיל ע"כ.

A reading in the final chapter of tractate Ketubot (page 105a) is:

[The sage] **Karna** would take an *istera* [a small coin] from the innocent party, and an *istera* from the guilty party, and he would judge their case. [I.e., he didn't know in advance which was innocent and which was guilty, but he was taking money from both sides.] **How could he do so? Isn't it written, “A bribe you shall not take”?** **They solved it there in the Gemara that Karna was taking unemployment wages** [since he could not pursue his usual work while dealing with the case].

[The Gemara asks:] **And is it permitted** [to take money] **as compensation for unemployment? Isn't it taught** [in a *Baraita*]: **Ugly is the judge who takes a salary to judge** [cases]; **however, his judgments are** [valid] **judgments?** [The Gemara clarifies:] **What are the circumstances** [of this *Baraita*]? **If we say** [that it is referring to one who accepted money as his] compensation for judging, are his judgments [valid] judgments? [Certainly not.] But didn't we learn [in a Mishna (*Kiddushin* 58b): Regarding] one who takes a salary to judge [cases], his judgments are void? **Rather** [it must certainly be referring to a situation where he takes money

* English translation: Copyright © 2021 by Charles S. Stein.

as] **compensation for unemployment, and [yet the *Baraita*] teaches: Ugly is the judge.**

[The Gemara answers:] **This [statement that the judge is ugly] applies only [when the fact that he is taking compensation for his] unemployment is not evident, [as he was not engaged in some other type of work at the time]. But Karna would take [money for his] unemployment [when] it was evident [that he was taking time off work to judge the case].**

- Ketubot 105a

מכאן משמע שהשֹׁכֵר בטלה אין שום איסור לקבלו אלא שמכוער הדין. ואם כן יש לומר דהתם בשופטים אוסר הכתוב לקבל שחד, מטעמא שכינן שקבל שחד ממנו תו לא תזי ליה חובה. ומשום הכי אמר הכתוב "לא-תקח שחד כי השחד יענר עיני חכמים", כלומר עין השֹׁכֵל של החכמים, והכא מיירי באותו שחד שמוותר דהיגו שֹׁכֵר בטלה, אלא שמכוער הדין. ולכן אמר "ושחד לא תקח", הגם שלפי הדין מותר ליקח שחד זה, אפילו הכי "כי השחד יענר פקחים" מפני שמכוער הדין.

From here [comes] the meaning that [regarding] the compensation for unemployment, there is no prohibition on receiving it, except that the judge is referred to as ugly when it's not evident that he is taking time off from other work. If so, it can be said that there in parshat Shoftim, Scripture forbade the receipt of bribery, from the sense that since [the judge] received a bribe from him, he will not find any fault with [the person paying him]. Because of this, Scripture says, "Do not take bribes, for bribes blind the eyes of the wise," as if to say, "bribes blind the eye of the intellect of the sages." Here in parshat Mishpatim, the same bribe is discussed as permitted, because it's compensation for unemployment, but the judge is ugly to take it where it is not evident that he is taking time off from other work. Therefore [Scripture] said, "Bribes you shall not take," even though according to the law it is permissible to take this bribe, even more so "for bribes blind the clear-sighted," because the judge is ugly to take the funds when it will not be evident to anyone who may learn of his receipt of funds that it was compensation for time lost from other work.

ומשום הכי התם פתיב חכמים, דאמרינן בסוף פתובות כל דין שלוקח שכר אינו נפטר מן העולם בלא טירוף דעת ובלא סמיות הלב. והכא פתיב "פקחים" שאף על פי שתתקנים חכמתו, שהרי אינו אוסר מן הדין, מפל מקום אינו נקרא פקח, הואיל שפוגם בעצמו לעשות מעשה מכוער.

Because of this, there in parshat Shoftim it is written, "eyes of the wise," as it says at the end of tractate Ketubot (105a), "Every judge who takes compensation doesn't leave the world without suffering confusion and without dullness of the heart." Here, it is written "clear-sighted," for even though his wisdom will continue, since it is not forbidden according to the law to take unemployment wages, in any regard he is not called "clear-sighted," since he harms himself to do an ugly action such as this.

* * *