



Parashat Mishpatim
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Parashat Mishpatim presents many of the Torah's civil laws, guidelines that a court should follow when confronted with a civil dispute between two litigants. In certain circumstances, the court is instructed to impose an oath upon the defendant so that he can avow his innocence. The Torah (22:7-8) makes reference to such an oath in the context of *shomerim* – people who have been entrusted with somebody else's article, which was lost or damaged under their care. In certain situations, the *shomer* must “approach God” – meaning, come before the court to take an oath avowing that he was not negligent in caring for the object. *Chazal* inferred that a litigant is called upon to swear in two other instances, as well: *modeh be-miktzat* (if he confesses to part of the sum demanded by the plaintiff) and *eid echad* (if one witness testifies to his owing the sum).

Maimonides, in his *Sefer Ha-mitzvot* (*asei* 7) and *Mishneh Torah* (*Hilkhot Shavuot* 11:1), considers this oath as one of the Torah's 248 affirmative commands. In his view, the Torah introduces this oath not simply as a matter of procedure, a mechanism that the court could employ in determining guilt or innocence, but rather as a *mitzva*, as a religious act. Nachmanides, in his critique of *Sefer Ha-mitzvot*, disagrees with this designation of these oaths as a *mitzva*. In his view, the institution of *shevu'at ha-dayanim* (the oaths imposed by the courts) simply *allows* the court in these situations to utilize an oath as a means of deciding the law. There is no *mitzva* involved; rather, the Torah simply suspends the general prohibition against swearing in God's Name, in order to give the court an instrument by which it can threaten a litigant to tell the truth.

Maimonides' view sheds new light on the verse cited above, requiring the litigants in cases of *shomerim* to “approach God.” As the *shomer* is now required by Torah law to take an oath, he is bidden to come before God, to serve the Almighty by uttering an oath. This point is elaborated upon by Rav Yair Kahn of Yeshivat Har Etzion (in the journal *Alon Shevut*, vol. 152, pp. 36-37):

According to Maimonides' view, we may explain the verse, “the owner shall come before God” as an expression of the service of God and a religious experience latent within the court oath. The litigant who takes the court oath is obligated to raise himself spiritually, and strengthen his religious consciousness in preparation for his oath. The courtroom is instantly transformed from a legal setting of claims and evidence, lies and confrontations, to a lofty, sacred site where the Name of God is sanctified, as the parties both accept upon themselves divine kingship.

Once we view *shevu'at ha-dayanim* as a *mitzva*, it transcends the narrow purpose of helping the court resolve civil conflicts. It requires the litigant to “come before God” in the sense of a religious experience – right there in the courtroom.

As Rav Kahn notes, this explains why the litigant must hold a Torah scroll as he declares his oath. This experience might serve as a kind of reenactment of *Ma'amad Har Sinai*, the Revelation at Sinai when *Benei Yisrael* received the Torah from God. Just as the nation approached God at the mountain to receive His law, similarly, the litigant approaches God, takes hold of the Torah, and proclaims his commitment to the laws and values revealed to us at Sinai.

The experience of *shevu'at ha-dayanim* emphasizes the extent to which we view the Torah as bearing direct relevance to each and every setting and situation in life. Sincere Torah commitment has the capacity to transform a courtroom into a sanctuary, and even into a quasi “Mount Sinai.” By unconditionally obeying and observing the Torah in all situations, we can take the experience of *Ma'amad Har Sinai* with us into every area of life, and, to some extent, feel God’s presence even in the most ordinary settings.