



## Ox, Pit, Tooth, and Fire: The Halakhah of Proximity

Parshat Mishpatim, Exodus 21:1 - 24:18 | By Mark Greenspan

### “Neighbors and Neighborly Relations”

by Rabbi Nina Beth Cardin, (pp. 713-726) in *The Observant Life*

#### Introduction

Many years ago I was invited to address several faculty members at a law school in central Pennsylvania. The professors were interested in learning more about what rabbis meant when they spoke about Jewish law. I began my lecture by speaking about the Torah as a book of narratives and law and then went on to discuss several different passages in the Torah that were independent codes of law. When I described some of the laws in *Parshat Mishpatim*, the covenant code, one of the professors responded with surprise, “Exodus sounds like a first year course in torts!” Indeed Exodus 21-23 does not sound so different from the type of cases that law students study or the types of laws found in the three thousand year old Code of Hammurabi. These laws deal with the minutiae of everyday life: a goring ox, a pit dug in a public thoroughfare, sheep that wander into a neighbor’s field, and a fire that damages a neighbor’s home. The details might be different but the basic situations are similar. Because we live within close proximity to one another we forge relationships and deal with conflicts on a daily basis. For Jews these are not just material and civic matters. They have deep religious significance. As a result Judaism created a *halakhah* of proximity for addressing and defining our relationships with one another. Those relationships should be a reflection of our connections with God.

#### The Torah Connection

*When a man opens a pit, or digs a pit and does not cover it, and an ox or an ass falls into it, the one responsible for the pit must make restitution: he shall pay the price to the owner, but he shall keep the dead animal.*

- Exodus 21:33-34

*When a man lets his livestock loose to graze in another's land, and so allows the field or a vineyard to be grazed bare, he must make restitution for the impairment of that field or vineyard. When a fire is started and spreads to thorns, so that stacked standing or growing grain is consumed, he who started the fire must make restitution.*

- Exodus 22:4-5

*When you encounter your enemy's ox or ass wandering, you must take it back to him. When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him.*

- Exodus 23:4-5

*The Talmudic sages said, “One who wishes to be a saintly person, a hasid, should observe the laws of nezikin, [tort law] meticulously” (BT, Baba Kama, 30a). It is in this perspective that we must study the laws of damages presented in our sedra. Although they are meant primarily for the judge to be able to compensate the injured party, for those of us who are not judges, they come to teach us what we may or may not do. This is exactly the manner in which we study the laws of Kashrut or Shabbat. Not in order to know what the punishment is but in order to prevent transgressing them. Since space, light, air, water etc.- our environmental resources - are all limited, the benefit that one person or group derives from some economic act, causes damage, material or otherwise, to the property or personal rights of others. The issues involved in the resultant conflicts between the individual and the community will be discussed in the Book of Leviticus. Here we are dealing with the conflict between two individuals or groups of individuals, arising from the restraints placed upon us by the proximity in which we live...Halakhic sources are adamant that we are responsible for preventing such damage caused by our own actions, or by those of our employees or by our property. Further, we are liable to pay for such damages.*

- Rabbi Meir Tamari, [online d'var Torah on Mishpatim](#)

*Outside of Israel, you would have to go to three different addresses to get the material... in Mishpatim. The Torah combines law (as in the Code of Hammurabi), cultic instructions (as from a priestly manual) and moral exhortation (as in Wisdom literature). This is the only Near Eastern Literature in which an amalgam of these three interests is found: law, cult, and wisdom.*

- Moshe Greenberg, as it is noted in Etz Hayim Humash

*The four prime categories of damages are the ox [which causes damage while walking], the opening of a pit in a public domain, the tooth [an animal that went to pasture on another's field], and causing an outbreak of fire. The category of the ox is not like that of the tooth, and the category of the tooth is not like that of the ox [if the Mishnah had listed the law regarding one, I would not be able to deduce the same law regarding the other]; nor are the categories of both the ox and the tooth, which are living things, like that of fire which is inanimate [if the Mishnah listed both ox and tooth, I would not be able to deduce the same law regarding fire, since they are different in nature]; nor are the categories of these [the ox, tooth and the fire], whose manner it is to go forth and cause damage, similar to the pit, which does not go forth and cause damage [rather the damage is caused when an animal approaches and falls into the pit]. The feature common to all these categories is that it is usual for them to cause damage, and the responsibility to prevent them from causing damage devolves upon its owner. And if one of them caused damage, the owner of that which caused the damage must pay with the choicest or with his property if he chooses to pay with land.*

- Mishnah Baba Kama, 1:1

*If a man digs a pit in the private domain and opened it from a public place, or if he digs it in the public domain and opens it from the private domain, or if he digs it in the private domain and opens it into another private domain, he is liable for any damage that may result. If a man digs a pit in the public domain and an ox or an ass falls into it and dies, he becomes liable, whether he dug a pit [a round hole], or a ditch [a long and narrow hole], or a cave [square, with roofing, but open], trenches [wide and square like a cave, but unroofed], or wedge-like ditches narrow at the bottom and wide at the top], he would be liable. If so, why is "pit" mentioned in the Torah? To teach that just as a pit can cause death because it is usually ten handbreadths deep, so too, other similar nuisances must be such as can cause death, ten handbreadths [deep]. Where, however, they were less than ten handbreadths deep, and an ox or a donkey fell into them and died, there would be exemption as the death of the animal should, in this case, not be completely attributed to the pit. If they were only injured by them, there would be liability*

- Mishnah Bab Kamma 5:5

*"You have established peace" (Psalms. 99:4). Rabbi Alexandri said: Two ass drivers who hated each other were walking on a road when the ass of one lay down under its burden. His companion saw it, and at first he passed on. But then he reflected: Is it not written in the Torah: "When you see the ass of your enemy lying under its burden...nevertheless, raise it with him?" (Exodus 23:5). So he returned, lent a hand, and helped his enemy in loading and unloading. He began talking to his enemy: "Release a bit here, pull up over there, unload over here." Thus peace came about between them, so that the driver of the overloaded ass said, "Did I not suppose that he hated me? But look how compassionate he was with me." By and by, the two entered an inn, ate and drank together, and became fast friends. What caused them to make peace and to become fast friends? Because one of them kept what is written in the Torah. Hence: "Thou hast established harmony."*

- Tanhuma, Mishpatim, #1

## Reflections

There is an important correlation between the opening statement in Rabbi Cardin's essay: "If you live near me and I live near you, we make claims on each other" and the statement in the Talmud quoted above by Rabbi Tamari: "One who wishes to be a saintly person, should observe the laws of *nezikin*, [tort law] meticulously." We are not commanded in the Torah to love one another as much as we are instructed to recognize that we have responsibilities to one another that are generated by proximity, social connections, and daily interactions. Piety is not defined by faith, prayer or religious observance alone but by the things we

do in our daily lives as business people, neighbors, and even as strangers. When I pass a person on the street I become obligated to that person by proximity. This is even truer in terms of the people who live in my neighborhood, town, county, state, nation, and even world. At a time when we experience ‘proximity’ to people around the globe through the internet my circle of responsibility is that much greater. The laws then in *Parshat Mishpatim* and *Baba Kama* are laws that define a pious life, a life of religious devotion because they suggest that I do not leave God at the door of the synagogue but bring Him/Her into my business and neighborly relations.

These laws can be very messy. The laws in this *parshah* are framed as casuistic laws (casuistic is case-based reasoning; if X happens then you shall do Y.) because they are framed by the daily experiences in our lives. This happens in a law of the court. Other laws in *Parshat Mishpatim* are apodictic; that is they are stated in absolute terms as in, “You must not kill!” Apodictic laws are faith- and principle-based laws that are stated in absolute terms. In *Nezikin*, then, we find a discussion of both types of laws. They define our relationship to property and to others. The Mishnah interprets the verses in Exodus as containing different categories of damages based on different types of interactions in our daily lives. And while we may not have a goring ox in our back yard or a pit in the alley way by our homes, the idea is as Nina Cardin describes: we have a responsibility to others not because we like them or they are our friends but because they are created in the image of God. We acknowledge their divinity by the way we treat the other. Faith begins with integrity, sensitivity and fairness in the private and public sectors of life.

Today such issues are defined by civil law. In many of the chapters of *The Observant Life* the authors speak of *Dina d'malkhuta dina*, the law of the land is binding on us. So we must wonder: what relevance does the Talmudic discussion of torts have for us today? The Torah challenges us to recognize that we may have broader responsibilities than those demanded of us by American courts. We have a civic responsibility to society but we have a religious responsibility to God even in matters of property. There may be times when it is not enough to say that the law of the land is binding; we have a responsibility to go beyond the civil law and conventional expectations of society about property and social interactions if we wish to aspire for piety and a connection to God. *Halakhah* allows us to see beyond the secular law to the demands of God. Nina Cardin challenges us to look at our legal responsibilities as Americans and to ask ourselves: what are our responsibilities as a Jew?

In a litigious world Judaism teaches us that there is more to law than payback when we feel that we have been wronged. *Halakhah* challenges us to see the goals of law as more than creating equilibrium between people in conflict, or simply determining who is guilty and who is innocent. In the case of the ass that has fallen and cannot get up, helping the faltering animal allows conflicting parties to make peace between themselves. Proximity obligates us but it also creates opportunities for *Tikkun Olam* and peace in the world.

### **Halakhah L'ma-aseh**

1. *If you live near me and I live near you, we make claims on each other. This is so. No matter how we feel about each other. Whether I like you or not, whether I choose to care about you or not - these things are of no consequence. Your presence alone demands things of me and my presence demands things of you.*  
- *The Observant Life*, pp. 713
2. *Just as God's presence in our lives demands a response from us, so too does our presence in the live of each others. And while this demand is a claim that emanates from every individual, those who stand directly before us have a greater claim than those who dwell at a greater remove. In the presence of the other we cannot argue that we did not know.*  
- *The Observant Life*, p. 713

3. *In neighborly relations, the reality of proximity meets the ethical imperative to seek traces of the Creator in the presence of others. This truth may be put more prosaically. What you do in your space affects me directly.*  
- *The Observant Life*, p. 714
4. *Modernity has changed the meaning of "neighborhood." That definition continues, but we also measure neighborhoods today not solely in terms of walk-able distances but also in terms of the reach of our actions.*  
- *The Observant Life*, p. 714
5. *The ability of neighbors to restrict another's behavior is based on three distinct rights: (1) the right to protect one's financial investment, (2) the right to preserve the nature and culture of the neighborhood in which one has settled, (3) the right to find aesthetic enjoyment in one's own home and one's own property.*  
- *The Observant Life*, pp. 715-716
6. *Even in a society in which secular law must be obeyed, Jewish citizens can use the Torah as a guide in terms of establishing their own sense of what should be allowed and what not and then proceeding to work for what they feel justified in obtaining.*  
- *The Observant Life*, p.717
7. *In an era when the earth itself is under assault from excessive development, the way we maintain our lawns, yards and trees counts. In these matters, we should be guided not only by how our decisions affect our neighbors but also by how our decisions may risk harming the environment.*  
- *The Observant Life*, p.723
8. *Jewish texts do not speak of private ownership of property in absolute terms, but rather private use of common property. All land is a gift from God given to us in trust...Acknowledgment of that simple truth will lead us to become the best kind of neighbors not only to those who live around us but also to those who will live here after we are gone.*  
- *The Observant Life*, p.725

### Questions to Ponder

1. Mishpatim and the Mishnah speaks of four categories of damages: a goring ox, a pit in a public thoroughfare, animals that invade the property of others, and fire that spreads from one's field to the next. How might we apply these categories to our society?
2. We speak of the Torah as the word of God and yet many of the pieces of legislation in Mishpatim are written as if they were promulgated by judges dealing with the daily conflicts in a community. How do we reconcile these two perspectives on the origins of Torah?
3. In what ways does proximity obligate us today? How is our sense of suburban neighborhoods a challenge to this idea?
4. How does studying the laws of torts help a person aspire for piety? How do you understand piety in today's world?
5. How are the three (actually there are four) cases in the Torah different from one another? Why was it necessary to include all of them in the Torah?
6. Given our commitment as Jews to the rule of American law, what can we gain by studying nezikin, criminal and civil law? How can we reconcile the conflicts between these two systems?
7. How would you define what it means to be a good neighbor from a Jewish perspective? In what ways is it similar to or different from our American perspective on neighborliness?

*Adapted from Torah Table Talk by Mark Greenspan*