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Truth and Peace

Rabbi Akiva says: “We do not show compassion in judgment...” (*Ketubot* 9:2, Kehati trans.).

Although said regarding a particular context, this statement of *Rabbi Akiva* begs a much larger question - What is the relationship between *din* (strict law) and *rachamim* (compassion) in *Halacha*? As will be shown, *Halacha* does not regard these two concepts as an impossible combination, but rather, in some instances as one and the same, and in others, as complementary entities.

Peshara (compromise)

On the issue of the role of the *Beit Din* as the arbiter of justice in Jewish society, the *Gemara* (*Sanhedrin* 6b) presents (among others) the following opinion:

R' Yehoshua ben Karcha says: It is a *mitzvah* for a judge to arbitrate a compromise, as it is stated: “Execute truth and judgement of peace in your gates” (*Zechariah* 8:16). But where there is judgement there is no peace; and where there is peace there is no judgement! What then is the judgement which has within it peace? I would say this is compromise.

The *Rambam* accepted this view and took it to its logical conclusion. He writes (*Yad, Hilchot Sanhedrin* 22:4):

It is a *mitzvah* to ask the disputing parties at the beginning of the court case whether they desire *din* or *peshara*...and any *Beit Din* that consistently rules a compromise is praiseworthy.

Thus, we see an example, and a fairly wide-reaching one at that, in which *Halacha* recognizes the need to take into account peace as well as truth.

Kofin Al Midat Sodom (coercion against behaviour akin to that of the people of Sodom)

Here we have another *Halachic* principle that legislates a higher moral standard into mainstream law. As Arnold Cohen writes, “In Jewish Civil Law, equity will not allow a man...to adopt a “dog in the manger attitude”, refusing to confer upon another a benefit which costs him nothing. Provided he suffers no real or contingent harm, a man will be coerced to bestow the required privilege on his fellow.”¹ This notion appears in a well-known *Mishnah* in *Pirkei Avot*. It states (5:13): There are four attitudes among men:

There are those who say, “What’s mine is mine and what’s yours is yours”. This is a median moral attitude and some say this is an attitude that was

carried by the people of Sodom.... Those who say, “What’s mine is yours and what’s yours is yours”- is righteous.

Once again, whilst on the one hand the above *Mishnah* recognises the element of ‘righteousness’ inherent in an altruistic stance on personal property rights, *Halacha* enforces this lofty model as standard practice.

Above and Beyond the Law (*Lifnim Mi’Shurat HaDin*)

A third example of when compassion and ethics become part and parcel with strict law is in the implementation of the concept of *Lifnim Mi’Shurat HaDin*. On this topic, the *Gemara* (*Bava Metzia* 83a) brings a powerful story:

Rabba bar bar Chanann (*RbbC*) had a keg of wine broken by porters. He took their cloaks as payment. They went and told *Rav*. *Rav* said to *RbbC*, “Give them back their cloaks!” *RbbC* then asked him, “Is that the *din* (strict law)?” *Rav* responded, “Yes, as it is written: In order that you go on the path of good people (*Mishlei* 2:20).” *RbbC* gave the porters back their cloaks. They (the porters) said to *Rav*, “We are poor people, and we laboured the entire day; we are starving and have nothing to eat.” *Rav* then said to *RbbC*, “Pay them their fee!” He asked *Rav*, “Is that the *din*?” *Rav* answered him, “Yes! As that very verse I quoted earlier continues: and keep the ways of righteous people.”

As *Rashi* on that *Gemara* notes, the verses quoted refer to “goodness” and “righteousness” rather than strict law and thus indicate that *Rav*’s judgement (and so too his definition of ‘*din*’ in this instance) was one that required *Rabba bar bar Chanann* to go beyond the letter of the law in his treatment of the porters.

We are left to conclude, along with *Rav Moshe Avigdor Amiel* (former Chief Rabbi of Tel Aviv-Jaffa) that “*Halacha* does contain two categories of ‘strict law’ and ‘beyond the letter of the law’, but under *Halacha*, ‘strict law’ itself often contains the ‘beyond the letter of the law’.”² *Rav Amiel* further explains that the character of *Halacha* parallels the character of *Am Yisrael*. For regarding us it is written, “your nation are all righteous people” (*Yeshaya* 60:21) and regarding Torah it is written, “And what nation is there so great, that has statutes and judgements so righteous as all this *Torah*” (*Devarim* 4:8).³

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¹ An Introduction to Jewish Civil Law, p.173

² Ethics and Legality in Jewish Law, p.17.

³ Ibid., p.9.

Revision Questions

כתובות ח' ב' – ט' ז'

- How does *R' Shimon* differentiate between property that, if sold by the wife after marriage, the husband may reclaim it from the buyers and property that the husband may not reclaim? (ח' ב')
- What is done with the following items that a wife inherits: (ח' ג')
 - Money?
 - Picked/detached fruit?
 - Unpicked fruit?
- Complete the following phrase and explain: (ח' ד')

"רבי שמעון אומר: מקום שיפה כוחו בכניסתה _____ ,
מקום שהורע כוחו בכניסתה _____ "
- What is done with the following items that a wife inherits: (ח' ה')
 - Elderly servants?
 - Old vines?
- When can a husband claim the expenses paid on *nichsei melog*? (ח' ה')
- Are there any restrictions placed on a *shomeret yabam* on the sale of property she inherits? (ח' ו')
- Explain the opinions of *Beit Shammai* and *Beit Hillel* regarding what is done with the property of a *shomeret yabam* that dies? (ח' ו')
- What is done with the *shomeret yabam*'s original husband's: (ח' ז')
 - Money?
 - Picked/detached fruit?
 - Unpicked fruit? (Explain both opinions.)
- Can the *yabam* set aside money for the *yavamah*'s *ketubah* in order to seize possession of his late brother's property? (ח' ח')
- What is the impact of the following statements made by a husband prior to marriage: (ט' א')
 - "דין ודברים אין לי בנכסין"?
 - "דין ודברים אין לי בנכסין ובפירותיהן"?
 - "דין ודברים אין לי בנכסין ובפירותיהן ובפרי ברותיהן, בחיין ובמותד"?
- Explain the debate regarding who inherits a collateral in the hands of a lender. (ט' ב')
- What other possessions are also debated in the same manner as the previous question? (ט' ג')
- If a wife is placed in charge of components of a business can the husband demand a *shevuah* from her (as in normal business partnerships)? (ט' ד')
- What is the impact of the following statements made by a husband prior to marriage: (ט' ה')
 - "נדר ושבועה אין לי עליך"?
 - "נדר ושבועה אין לי עליך ועל יורשיך הבאים ברשותיך"?
 - "נדר ושבועה אין לי ולא ירושי ולא לבאים ברשותי עליך ועל יורשיך הבאים ברשותיך"?
- If the widow is made custodian of her late husband property, can the *yorshim* demand a *shevuah* from her? (ט' ו')
- In which five cases must a widow vow prior to collecting her *ketubah*? (ט' ז')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
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Ketubot 9:8-9	Ketubot 10:1-2	Ketubot 10:3-4	Ketubot 10:5-6	Ketubot 11:1-2	Ketubot 11:3-4	Ketubot 11:5-6

