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***Yad Avraham Institute***  
**Weekly Torah Commentaries Series**  
**Portion of Shoftim**

**Presented By: Rabbi Yosef Kalatsky, *Shlita***

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**About the Yad Avraham Institute**

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## Shoftim

Presented by

Rabbi Yosef Kalatsky, *Shlita*

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### 1. Moshe's Selfless Dedication to G'd

The Torah states, "**Judges and officers you shall appoint for yourself....**" The Torah could have stated, "Judges and officers shall you appoint..." What is the significance of the words "**for yourself?**"

The Midrash explains, "The words '**for yourself**' teach us that the judicial system of the Jewish people identifies with Moshe. It is because the judicial system (justice) is one of three areas for which Moshe had sacrificed. Moshe had sacrificed for the sake of Torah. As it states, '**He was with G'd (in heaven) for forty days and forty nights...**' Since he sacrificed for the acquisition of the Torah, the Torah identifies with him, as it is written in Malachi, '**You should remember the Torah of Moshe My servant.**'" Why is Moshe's being in heaven for forty days and nights considered to be a sacrifice?

The Torah tells us that before Moshe passed away he rebuked the Jewish people for many of their failings that had taken place over the past forty years. He recounted, that at the time that Yisro had suggested that Moshe establish a judicial system on behalf of the Jewish people they responded, "**The thing that you propose to do is good.**" Rashi cites Chazal who explain, "The response of the Jewish people was for their own self-interest. They should have responded by saying, 'Our teacher Moshe, from whom is it better to learn, from the teacher or from the student? Is it not better to learn from you, who was pained and sacrificed for the sake of acquiring the Torah?'..." The Torah tells us that when Moshe had been in heaven to be taught the Torah by G'd, he did not eat or drink. As Moshe had said to the Jewish people, "**For forty days and forty nights bread I did not eat and water I did not drink.**" The Midrash asks, "Why was it necessary for Moshe to tell the Jewish people that he was denied food and drink for this extended period of time? What is its relevance to them? Moshe was saying to the Jewish people that the manner in which one must acquire Torah must be similar to his own. He had said to them, 'Just as I sacrificed my blood and fat for the sake of the acquisition of Torah, so too must you sacrifice your

physicality and material comforts in order to acquire Torah.'" Moshe was qualified to be the conduit to transmit the Torah to the Jewish people, because he had sacrificed himself for its acquisition.

The Midrash continues, "In addition, Moshe sacrificed for the sake of the Jewish people. As it states (after the sin of the Golden Calf), '**If You (G'd) will not carry their sin You should obliterate my name from Your book (the Torah).**' Thus, the Jewish people identify as Moshe's people, as it states, '**Go down because your people have become corrupted.**'" Sforno explains that Moshe was willing transfer all of his merits to the Jewish people so that they could continue to exist. After the sin of the Golden Calf, they were classified as "evil," because the sin of idolatry weighed heavily upon them. Moshe, through his transfer of merit to their spiritual account, would sway the balance to the point that their merits would outweigh the sin of the Golden Calf, thus they would not be destroyed because they would be classified as "righteous." He was willing to relinquish his own eternity for the sake of the Jewish people.

It is interesting to note that when G'd told Moshe to go down because "**your people (have become corrupted)**" G'd was not referring to the Jewish people themselves. Rashi cites Chazal who explain that "your people" is referring to the rabble and not the Jewish people. If this is so, how is it indicated through the words "your people" that the Jewish people identify with Moshe as his?

Chazal tell us that G'd refers to the rabble as "your people" to Moshe, because he chose to allow them to leave Egypt with the Jewish people and did not consult with G'd regarding this decision. In fact, they were the ones who instigated the Golden Calf. Thus, G'd was reprimanding Moshe to place fault upon him, that he was responsible for the catastrophic sin of the Golden Calf. It was his decision that allowed the rabble to accompany the Jewish people out of Egypt. Why did Moshe not consult with G'd regarding the rabble, who were pagans and not part of the Jewish people?

The Gemara in Tractate Nidarim tells us that one of the reasons the Jewish people were destined to be enslaved in Egypt was because Avraham our Patriarch, had failed. After Avraham had defeated the four mightiest kings, he had the opportunity to take a nation of pagans and convert them to monotheism but he did not. After Avraham's victory the King of Sodom said to him, **"Give me the people and the possessions shall be yours."**

Avraham's response to the King of Sodom was, **"I will not take from you as much as a thread or a bootstrap."**

At that moment, Avraham, as the victor, could have said to the king of Sodom, "I will take the people." He would have then converted them to monotheism, but he did not.

G'd said to Avraham, "Because you allowed these people to remain pagans, and not bring them under the wings of the Divine Presence your children shall be exiled to a land that is not their own..." Because Avraham did not take the opportunity to convert the people of Sodom, they were ultimately destroyed.

Moshe, as the redeemer of the Jewish people, understood that the cause of the bondage of Egypt was attributed to the failing of Avraham for not taking the opportunity that was at hand. It was obvious to Moshe that he could not repeat the same mistake that Avraham had made, forgoing the opportunity to convert pagans to monotheism. Moshe was in a position either to reject the rabble of Egypt and allow them to remain pagans or allow them to accompany the Jewish people to Sinai. The obvious choice was to attach them to the Divine Presence. Moshe believed that if he would allow the rabble to remain in Egypt, the redemption of the Jewish people would only be a temporary state. In order to give it permanence, Moshe believed that he needed to allow the rabble to accompany them out of Egypt. G'd used the term "your people" to indicate that the decision of Moshe was purely for the sake of the Jewish people so that their redemption should be on a permanent level. Thus, "your people" is an expression of Moshe's sacrifice for the sake of the Jewish people.

Avraham's failing not to convert the Sodomite community to monotheism is not comparable to Moshe's converting the rabble of Egypt to become part of the Jewish people. At the time of Avraham, there was no Jewish people. All that existed in the world were pagans. Every individual that was brought to the truth of monotheism was considered a great accomplishment and a sanctification of G'd's Name. However, at the time of the redemption from Egypt, there was a Jewish people who descended from the holy Patriarchs. By allowing the

rabble to enter into the midst of the Jewish people as converts, it was introducing a foreign element, which could have unlimited negative ramifications. Therefore, Moshe's decision was not correct.

The Midrash continues, "The judicial system identifies with Moshe because he sacrificed himself for the sake of justice. As it states, **'He had killed the Egyptian and buried him in the sand.'**" When Moshe witnessed an Egyptian beating a Jew, he killed him for the injustice that he was perpetrating. When Moshe chose to kill the Egyptian, it was the equivalent of a verdict of the court being rendered. Moshe did so without considering the consequences and ramifications of his decision. As it states, **"(Dasan and Aviram after being reprimanded by Moshe had said to him) Who appointed you... a judge over us?"** It was because of his sacrifice for the sake of justice that the appointment of judges identifies with him. As it states, **"...his (Moshe) laws upon Israel."** Although Moshe understood that there was a possibility as a result of his decision, that he would need to flee Egypt, and would no longer be an advocate for the Jewish people in the palace, it did not deter him from implementing justice.

We are able to draw from the Midrash that when a Jew is willing to sacrifice for any aspect of spirituality for the sake of G'd, that area of accomplishment will identify with him.

## ***2. What Does G'd Want For His Children?***

The Torah states, **"Judges and officers shall you appoint in all your cities..."** The Torah is telling us that there is a Positive Commandment that every Jewish community in the Land of Israel must establish a court of qualified judges and law enforcers to carry out their decisions. The Mishna in Tractate Sanhedrin tells us that if a community is comprised of as few as 120 Jews it must have a rabbinical court. Chazal tell us that the Jewish court (*bais din*) to which the verse is referring is comprised of twenty-three qualified judges. This court is known as the *Sanhedrin Ketana (Lesser Court)*.

G'd created existence for the sake of man to function within a context of free choice. As it states, **"G'd created man in His image..."** Sforno explains the term **"in His image"** to mean, "Just as G'd acts as He chooses, so too was man given the ability to make choices to do good or evil." The discerning characteristic that distinguishes between the human being and an animal is

the ability to make choices. The animal's function is solely based on instinct, while the human being, although has relevance to instinctive behavior, the primary basis for his actions are through his own choices due to his intellect. Man was endowed with the ability to subdue and control his inclination through his intellect. Rambam writes in the Laws of Repentance that it is because man has the ability to choose to do right or wrong, he is deserving of reward for the right choice and fully liable for punishment when he chooses to do wrong. If one chooses to act properly, one deserves to be rewarded, because it was due to his own initiative that the good deed was performed. However, if he chooses to transgress, one deserves to be punished because the transgression is a result of one not choosing to suppress his evil inclination.

If the primary purpose of man is to function within a context of choice, one would think that establishing such a supervisory infrastructure of judges and enforcers within the community would greatly limit one's choice to do as he wishes. Understanding and appreciating the severe consequences of one's transgressing the law, that it will bring about corporal punishment, a rational or responsible person would not consider for a moment to transgress. For example, if one were to be forewarned not to eat non-kosher meat and he deliberately chooses to eat an amount that is minimally the volume of an olive, he is subject to thirty-nine lashes. In order for one to recover from such an ordeal, one may need many years to recover from the physical effect of being lashed by the court. In addition, the Gemara tells us that if one refuses to don tefilin or build a sukkah (which are both positive commandments) the court is authorized by the Torah to compel him to fulfill the mitzvah even at the cost of his life. If this judicial system is implemented in every Jewish community, how can one truly exercise his free will? Seemingly, one has no choice but to follow the dictate of the Torah.

The most serious consequence of the Jewish people being in a state of exile, is their spiritual degeneration. It is not only because the Jew has been displaced from a setting of holiness and is no longer within the proximity of the Temple in the Land of Israel, but also the context of choice has radically changed. In a state of displacement, the Torah no longer dictates the life of a Jew because he is under the influence and dominion of other nations. Thus, one may choose not to adhere to the Torah and behave as he pleases. He can choose to either to adhere to the dictates of the Torah and be fully committed to his Jewish heritage, or G'd forbid assimilate with the nations of the world, thus abandoning his Judaism. This

setting is not the context of choice that the Torah prefers. But rather, every Jew must minimally live and behave within a context of the infrastructure that is prescribed by the Torah.

The Torah states, **"Moshe said to the Jewish people, 'You are children of Hashem, your G'd..."** A

Jew is considered to be the child of G'd. Just as a father limits the choices that are available to his son, so that he should not bring harm upon himself, so too does G'd limit the extent of choices that are available to the Jew. Thus, G'd does not want a Jew to behave in a depraved manner or live a life that is devoid of spirituality. He wants the Jew to retain his spiritual profile which is something that has a semblance of the "image of G'd." In this regard, the Torah does not want the Jew to choose whether or not to observe the Shabbos, but rather the Torah wants the Jew to choose a level of qualitative performance of the mitzvos.

The context of choice in which G'd wants the Jew to function is to choose how one will perform the mitzvah. Will he perform for the sake of G'd (l'shmah) or with an ulterior motive (shelo l'shmah)? Will the Jew serve G'd out of love or out of fear? The Gemara in Tractate Yevomos cites a verse from Yechezkel, "You (the Jewish people) are called adam (man)..." The Gemara infers from this verse, that in contrast the nations of the world are not classified as "*adam* (man). The Jewish people assume the classification of "*adam*" pre-sin, who was meant to achieve a spiritualization of his essence through adhering to G'd's Will. Observing the Torah in its entirety, even at a lesser level, the Jew will identify as "*adam*." This is maintained by the establishment of a judicial system and law enforcers. The Jew's challenge in life within this context is if he will spiritually advance or stagnate, only retaining his profile as a Jew.

The Mishna in Tractate Menachos tells us that one can fulfill the positive commandment of engaging in Torah study day and night through the recitation of the Shema in the morning and in the evening. This is the most minimal level for fulfilling one's obligation; however, G'd wants the Jew to revere and esteem the mitzvah of studying Torah to the degree that he will be fully occupied with its study during every waking moment if he is able to do so.

There is the positive commandments of "*cleaving to G'd (bo tidbuk)*" and "*walking in His Ways (v'lechtech b'drachav)*" through which one may choose to sanctify and spiritualize the most mundane actions. As Rambam writes in the Laws of Deos, if one chooses to eat in order to nourish his body to be a more effective servant of G'd, his act of eating is considered a mitzvah. Thus, it causes

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holiness. If one procreates with the intent that his children should be devoutly righteous and be servants of G'd, his act of procreation is considered a holy act. This is the context of choice that G'd intended for the Jewish people.

### 3. The Court, Reflecting G'd's Profile

The Torah states, **"Judges and officers shall you appoint in all your cities...and they shall judge the people with righteous judgment."** The Midrash states, "When the courts maintain their integrity and their judgments are righteous, they are doing kindness to creation and are protecting mankind from tragedy. As it states in Psalms, '...(When) Truth will sprout from earth then Righteousness is gazed upon from heaven.' When earthly judgment flourishes with Truth then Kindness will come from heaven. G'd will do Kindness and Righteousness to mankind and protect them from tragedy and suffering. Good will come upon the world." Why is blessing and protection from tragedy a direct outgrowth of Truth?

The Gemara in Tractate Sanhedrin tells us that if a judge renders a truthful (*emmes lamito*) verdict that is above reproach, he becomes G'd's partner in Creation. Tosfos asks, "What is the meaning of a truthful judgment that is above reproach? It would have been sufficient to state 'a judge who renders a truthful verdict.'" Tosfos explains that in certain instances a judge, although he had properly followed the procedures of the court by interrogating the witnesses and thus the evidence was proven to be credible; nevertheless, if the judge has a sense that something is lacking in the absolute truthfulness of the witnesses (although he cannot substantiate his concern) he must recuse himself from the case. This is considered to be a truthful judgment that is above reproach. A judge who has this level of integrity and sensitivity to truth, becomes G'd's partner in Creation. Why is this so?

The Gemara in Tractate Shabbos states, "The signet of G'd is Truth." The basis for all blessing and goodness is G'd Himself. If G'd associates Himself with something it will have unlimited blessing and protection from tragedy and suffering. Therefore, when the court renders righteous, truthful verdicts, G'd will gaze upon existence with blessing, thus protecting the world from tragedy and suffering.

Ramchal writes in his work, *The Way of G'd*, that when G'd distances Himself from existence, it causes a

spiritual vacuum that engenders tragedy and suffering. However, when He associates Himself with existence, there is an abundance of spiritual bounty which brings blessing and goodness.

When one lives a life of Truth and is truthful to himself and to others, this will cause G'd to have relevance to him because he reflects His profile of Truth. However, if one compromises in the area of Truth it will cause G'd to distance Himself from that individual. Maharal of Prague explains that truth is only something that is truly unadulterated. If its truthfulness is compromised even as much as an iota, it is no longer true. He points out that the letters for "Truth" in Hebrew are "*aleph, mem, tuf*." The letter "aleph" in the Hebrew language represents something infinitesimal. If one were to remove as much as an "aleph" from "*emmes/truth*" the letters that remain would spell s "*mem tuf, mes*" which means death. It cannot be classified as Truth unless it is absolute. If the court issues a verdict that is truly just and truthful, goodness and blessing will come upon existence. However, if the verdict is not truthful, regardless of the rationale of the court, it will allow tragedy and suffering to befall mankind. Thus, if a judge renders a verdict that is truthful beyond reproach, he is then considered to be G'd's partner in Creation.

King Solomon writes in Proverbs, "Acquire Truth, and do not sell it." The Gemara explains that the "Truth" to which the verse is referring is the Torah itself. Meaning one should engage in the study of Torah, which is G'd's Wisdom and thus unadulterated truth. When one studies Torah, one engages in an entity that is the purest level of truth, which is even greater than the truthful verdict of the judge. This is because one is studying G'd's Torah. This individual will merit that G'd will associate Himself with Him and bring blessing to him and the world. As it states in the Zohar, "Israel (the Jewish people), the Torah, and G'd are all one."

### 4. The Decision of the Court is Divine

The Midrash cites a verse, " 'When judgment is rendered one is in the presence of G'd...' " When the defendants enter into the court, they must do so with a degree of reverence. As the verse states, 'The two defendants stood before G'd...' The judges are also in the presence of G'd and must have a sense of reverence. It is as if G'd Himself is being judged. Yoshafat said to the judges, 'You are not judging the individuals, but rather, you are judging G'd.' Is it possible that a mortal is judging

his Creator? When the judge evaluates the evidence and renders a judgment, he must consider that it is as if he is judging G'd. Why is this so? G'd says, 'If an individual performs a mitzvah before Me, he is deserving of reward. If I were to reward him with 100 fields for his good deed, and the court rules that he must relinquish one of them to the plaintiff, then I must compensate him in another way since I have already decreed that he should receive 100 fields. Therefore, I need to give him from one of My fields. It is as if you judged Me, since I needed to relinquish one of My fields.' The judge must therefore understand that when he renders a judgment it is as if he is judging G'd."

The Gemara in Tractate Sanhedrin tells us that when a judge sits in judgment, he must envision himself as sitting with a double-edged sword is resting between his thighs. If he were to deviate in the slightest to the left or to the right, he will be cut in half. This is the degree of trepidation that a judge must feel when he is adjudicating a case. Why is this so? It is because the consequence of his judgment will affect G'd regarding His decrees, as explained in the Midrash.

The Torah states, **"Judges and officers shall you appoint in all your cities...and they shall judge the people with righteous judgment (mishpat tzedek)."** Ohr HaChaim HaKadosh explains this verse on an allusionary level, "King David writes in Psalms, 'He will judge existence with righteousness (tzedek)...' The Zohar tells us that the heavenly court is referred to as 'tzedek (righteous). The Gemara tells us in Tractate Beitza that one's yearly stipend is allocated by G'd from one Rosh

Hashanah to the next. If there is a monetary dispute between two defendants and they come before the court, if the ruling of the Rabbinical court concurs with the heavenly court, it is a judgment of "tzedek (righteousness)." court's ruling is correct and in conformance with the Torah, then the verdict will be allocation of funds will be in conformance with the allocate decreed by G'd on Rosh Hashanah. Thus, it is in conformance with the ruling of the heavenly court, which is referred to as "tzedek." If however, the court rules in a manner that is not in conformance with the decree of the heavenly court, then G'd must compensate the individual in another manner. This is the reason a judge must have an exceptional level of proficiency and reverence when rendering a verdict because of his ruling is not righteous, it infringes upon G'd Himself.

## ***5. The Power of the Sanhedrin***

The Torah tells us that if one is in doubt regarding the meaning of a law in the Torah one should consult with the Sanhedrin. The Torah states, **"If a matter of judgment is hidden from you...you shall rise up and ascend to the place that Hashem, your G'd shall choose....you shall inquire..."** Once one is told the correct understanding, one is obligated to adhering to the ruling of the Sanhedrin (High Court). As it states **"You shall do according to the word that they will tell you, ... and according to the judgment that they will say to you shall you do; you shall not deviate from the word that they tell you, right or left."** The Torah could have simply stated, "do not deviate (from their word)." Why does the verse state, "you shall not deviate... right or left?" Rashi cites Chazal who explain, "One should adhere to the ruling of the court even if they should say that the one's left is his right and his right is in fact his left. How much more so if they tell you that your right is your right and your left is your left."

Chazal are telling us that one may believe that his right is his right, however, the judges/Rabbis who have a greater level of clarity and understanding know that his right is in fact his left. Based on one's limited understanding, he may believe that something is permitted when in fact it is forbidden. Therefore, one may believe something to be so, However, if the judges say differently, he must adhere to their words because their advanced level of clarity enables them to perceive reality for what it is – even if their ruling is contrary to one's rational perspective and understanding.

Ramban writes in his commentary, "The Spirit of G'd rests upon the officiants in the Temple (along side the Sanctuary). He will not abandon His devoutly righteous. They merit special Divine Assistance that protects them from errors and pitfalls." Because of this special level of Divine Assistance that is bestowed upon the judges, one must adhere to their rulings, even if one does not understand or agree with them. Even if the individual's understanding of something is correct, he must nevertheless adhere to the ruling of the Sanhedrin because their words are synonymous with Torah. The position of the Sanhedrin is the position of the Torah. Thus, regardless of the accuracy of one's understanding he must abide by their ruling. If one is able to subordinate himself to the ruling of the Sanhedrin, despite his own beliefs, it is considered to be a praiseworthy spiritual accomplishment.

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The Torah tells us that if there is a dissenting opinion within the Sanhedrin, the minority must follow the majority – regardless of the cogency of the minority opinion. If there is an individual who is qualified to be a judge and does not accept the majority opinion (regardless of the accuracy/cogency of his position) and publicly apposes/defies it, the Torah states that he must be put to death. Ramban explains that the mitzvah of adhering to the ruling of the Sanhedrin, regardless of the accuracy of their position, is a necessary and essential commandment. There was one Torah that was given to the Jewish people at Sinai. Since each individual processes and understands reality in his own way, if people were allowed to follow their own understanding, there would be many opposing positions – regardless of the fact that there is only one Torah. Therefore there is a commandment that one must adhere to the ruling of the Sanhedrin, regardless of its correctness because the Sanhedrin's ruling is that of the Torah.

The Torah tells us that if the court finds an individual guilty of committing an inadvertent murder, he must flee to a city of refuge and remain there until the passing of the Kohen Gadol (High Priest). The High Priest is responsible pray on behalf of the Jewish people. His role is unique in that he is the only one that is permitted to enter into the Holy of Holies and beseech G'd on their behalf. Thus, if the tragedy of inadvertent murder takes place under his watch, he is held accountable/responsible for it. If he had prayed more intensely, the tragedy would have been averted. This is the relationship between the High Priest and the inadvertent murderer.

It is interesting to note that if a new Kohen Gadol is installed before the ruling of the court, but after the murder, the inadvertent murderer must still be confined to the city of refuge until the passing of the High Priest. The Gemara in Tractate Makos asks, "If an individual were to inadvertently commit murder while the Kohen Gadol was already installed, one could say that the High Priest could have prevented this tragedy if he had only prayed more intensely. However, if the tragedy had occurred prior to the appointment of the High Priest, how could he be held culpable?" The Gemara answers, "As the new Kohen Gadol, he could have prayed that the court find the inadvertent murder not guilty. The fact that he was found guilty indicates that he did not pray sufficiently. Therefore, the inadvertent murder must remain in the city of refuge until the passing of the Kohen Gadol." If one is in fact guilty, the court should find him guilty. What relevance

does the prayers of the High Priest have with the ruling of the court?

The Torah dictates that the ruling of the Sanhedrin establishes reality. The understanding of the judges is guided by G'd Himself. Thus it is possible that if the High Priest had beseeched G'd sufficiently, the judges would have perceived and understood him to be not guilty.

Chofetz Chaim writes in his work *Chofetz Chaim*, that there was a situation in which an individual, who believed himself to be innocent (and was in fact innocent); however despite this, he was found guilty. One of the judges wrote a brief on the ruling and the background of the case. Another individual who read the brief openly criticized the ruling as being baseless and flawed. Chofetz Chaim explains that the individual who criticized the ruling failed in two ways. If he had difficulty with the ruling he should have approached the judges in private and discussed the matter with them and not with the defendant who was found guilty. In addition, the Rosh (an earlier commentator) in Tractate Bava Basera writes that in certain cases one is found guilty because G'd wants him to be found guilty – regardless of his innocence. Therefore the individual should not have criticized the ruling of the court because it is the word of G'd.