

Parshas Ki Seitze – Thirty Nine of the Best - Dr J H Freilich (*reprinted*)

ד' / יא אלול תשע"ז – 26 August/ 2 September 2017 – שבת פ' שופטים / כי תצא

In Parshas Ki Seitzei, Chapter 25 v4, we find the source for the punishment of מלקות, lashes, for transgressing a negative commandment, such as muzzling an ox when it is threshing. The Torah appears to indicate that the number of lashes should be forty and not one more. However, immediately before this in v2, we are given to understand that where מלקות is appropriate, the offender should receive 'כדי רשעתו' on his front side and double that on his back (see Torah Temimah). The Sifsei Chachomim suggests that he gets 13 stripes on his front side corresponding to the age of 13 when a person becomes eligible for punishment. The Kli Yokor suggests it alludes to the offender rejecting the One who is אחד, or the Torah which is darshened in 13 ways. The Kli Yokor also provides two explanations for the sinner getting a double portion on his back. One is that when a person sins, there is definitely an element of turning one's back on the Shechina and acting as if הקב"ה doesn't see what he is up to, similar to a thief (גנב). However there is also the possibility that the sinner is being brazen-faced, like the robber (גזלן), hence he deserves a single portion on the his front. Another explanation he offers is that a person should always bear in mind where he originates from, his לפניו, namely seminal substance, and also where his end will be, his אחוריו, which refers both to a place of decay and to giving an account of himself before the מעלה של בית דין. It is clear from the Possuk of כדי רשעתו that the punishment of מלקות has to be a multiple of 3 and hence the maximum number of lashes is 39. Thus chazal darshan ארבאים במספר: to mean the number that borders or makes up 40, viz 39.

With this background, the Chassam Sofer (ח"ס) tackles two apparently conflicting Gemaras. In Kiddushin 33b, the question is raised, granted the Torah requires that we must stand before a sage, but does one have to stand before a Sefer Torah ? R' Chilkia, R' Cimon, R' Elazar say it's a Kal VeChomer, If we stand before those who learn Torah, then how much more so we should stand before the Torah itself. The Rishonim pasken this L'Halachah. We also see from this argument that it is more logical and chamur to stand up before a Sefer Torah than before a sage. Yet in Makos 22b Rovoh says how foolish other people are if they stand before a Sefer Torah but not before a great man (תלמיד חכם). After all, Rovoh reasons, the Torah says the offender should be given 40 lashes and chazal reduced it by one. Asks the ח"ס, what is so foolish about those people, if we follow the reasoning of the Gemara in Kiddushin ? Furthermore, if anything, shouldn't those people be considered רשעים for transgressing a Torah commandment ?

To answer these questions, the ח"ס first points to a Ramban which suggests that the number of 40 lashes alludes to the 40 days it took for Moishe Rabbenu to receive the Torah, which the offender has violated. Why then does he only get 39 ? The ח"ס suggests that Moishe Rabbenu was learning Torah for 39 complete days but on 1 other day, he was not completely immersed in learning as the Luchos were being written. Writing Torah is equivalent to thinking Torah which is not considered the same as talking Torah. Hence no ברכת התורה for the two former modes of learning and why the lashes are reduced by one. However, to understand Rovoh's statement, the ח"ס makes use of the following principle stated in Kiddushin. Artisans should not interrupt their work to stand up before a תלמיד חכם but should do so before someone performing a Mitzva. Asks the ח"ס surely a תלמיד חכם is continuously occupying his mind with Torah learning and therefore performing a Mitzva ? The answer is that thinking Torah is not on the same level as performing a Mitzva. Now the ח"ס explains that those people, that Rovoh was referring to, were artisans who were exempt from standing up in front of a תלמיד חכם. Yet they would stand up for a written Sefer Torah as if they were in the presence of a Mitzva. To Rovoh though, just as with Matan Torah, a written Sefer Torah was no more important than thinking Torah and if you were prepared to stand up in the presence of a Sefer Torah, then you should stand before a תלמיד חכם too.

May we all be זוכה to give proper Kovod to the Torah and to תלמידי חכמים .

This Dvar Torah is in memory of אשר אנשל ר' חיים שמעון בן ר' אשר אנשל who was the father of Mrs Esther Freilich and who was niphtar on the 17th Ellul 5731. He survived the Holocaust and communism in post-war Europe and then was zocheh to make Aliya with his family to Israel in 1959.