

משפט שלמה

SH'LOMOH'S JUDGMENT

by Yitzchak Etshalom

I

PREFATORY NOTE

Since Parashat Mikketz is nearly always Shabbat Hanukkah, the special Haftarah for Hanukkah (from the visions of Zekharyah) is usually read. Once every few years, Mikketz get the “opportunity” to have its “own” Haftarah read - as was the case this year. Loath to wait until 2020 (the next time this Haftarah will be read), we present this analysis of the “proper” Haftarah of Parashat Mikketz.

II

THE BACKGROUND

The first two chapters of Melakhim focus on the death of David and the establishment of Sh'lomoh's rule. Subsequent to taking firm hold of the throne and taking care of some “unfinished business”, Sh'lomoh came to Giv'on to bring offerings to Hashem. That night, Hashem appeared to him in a dream/vision, offering him whatever gift he wanted. Sh'lomoh requested a discerning heart, to be able to better judge His people. Hashem was pleased with his choice and granted his wish - along with all the good things he “passed up”.

This is where the Haftarah picks up:

And Sh'lomoh awoke; and, behold, it was a dream. And he came to Yerushalayim, and stood before the ark of the covenant of Hashem, and offered up burnt offerings, and offered peace offerings, and made a feast for all his servants.

Then came there two women, who were harlots, to the king, and stood before him. And one woman said, O my lord, I and this woman live in one house; and I gave birth to a child with her in the house. And it came to pass the third day after I had given birth, that this woman also gave birth; and we were together; there was no stranger with us in the house, only the two of us in the house. And this woman's child died in the night; because she lay on it. And she arose at midnight, and took my son from my side, while your maidservant slept, and laid it in her bosom, and laid her dead child in my bosom. And when I rose in the morning to nurse my child, behold, it was dead; but when I had looked at it closely in the morning, behold, it was not my son, that I had borne. And the other woman said, No; but the living child is my son, and the dead is your son. And this said, No; but the dead is your son, and the living is my son, and they spoke before the king. Then said the king, One says, This is my son who lives, and your son is the dead; and the other says, No; but your son is the dead, and my son is the living.

And the king said, Bring me a sword. And they brought a sword before the king. And the king said, Divide the living child in two, and give half to one, and half to the other. Then the woman, whose son was the living child, spoke to the king, for her love was enkindled towards her son, and she said, O my lord, give her the living child, but do not slay it. But the other said, Let it be neither mine nor yours, but divide it.

Then the king answered and said, Give her the living child, and do not slay it; she is its mother. And all Yisra'el heard of the judgment which the king had judged; and they feared the king; for they saw that the wisdom of G-d was in him, to do judgment. (I Melakhim 3:15-28)

This story, which is as well-known as it is misunderstood, clearly serves to highlight the fulfillment of G-d's promise to imbue Sh'lomoh with great wisdom. The conventional understanding of Sh'lomoh's wisdom here is that he knew that the real mother would certainly prefer to save her baby's life rather than risk his death in order to maintain possession over him. Most people who are not familiar with the text, but just know the story, seem to recall it in an alternative order: First the faux-mere speaks up, accepting Sh'lomoh's judgment, and then the real mother is overcome with compassion and reveals her blood ties, giving up the child

that he may live.

The text cannot withstand this approach. Sh'lomoh certainly never intended to rend the child in two; his "compromise" was a bluff. One can never bluff - especially in matters of life and death - unless sure that the bluff will work. In this case, he had to be absolutely certain - not only that the real mother would forgo her rights to the child to spare him, but also that the faux-mere would insist on completing the "split." How could he know such a thing?

Moreover, the faux-mere's response is bizzare; if the sequence in the text were like the popular version of the story, it would be tolerable. But the sequence in the text is reversed; first the real mother cedes her rights, and only then does the faux-mere insist on the "letter of the law". Why didn't she quietly accept her victory - and the child she so desperately wanted?

In sum, we have two questions here, which are certainly interrelated:

- 1) Why didn't the faux-mere accept her victory in court?
- 2) How could Sh'lomoh know, with such certainty, that she would react in this odd way?

A cyber-colleague of mine, Rabbi Mordechai Kornfeld of Yeshivat Ohr Yerushalayim, addressed these issues a number of years ago; here is the central piece of his essay:

A brilliant and original answer to these questions is offered by two commentators from the 13th century: Rav Yehoshua Ibn Shu'ib in his *Drasha for Parashat Mishpatim*, and Rav Menachem HaMe'iri in his commentary to *Yevamot 17a*. (Another Torah sage, the author of *Shemen Roke'ach* and *Sha'ar Hachazakot*, arrived at the same explanation independently several centuries later.)

In order to understand their answer, an introduction summarizing several of the details of the laws of "Yibum" is called for.

A

SOME OF THE LAWS OF YIBUM

If there are brothers, and one of them dies without children, the wife of the deceased man may not marry "out," to another man. Her brother-in-law (that is, her levir, or husband's brother) must marry her and thus perform "Yibum" [=levirate marriage] on her.... If the man does not want to marry her, she shall approach the elders and declare, "My brother-in-law refuses to establish his brother's name in Israel; he does not consent to perform "Yibum" on me" Then she shall approach him in the presence of the elders and remove his shoe from his foot, and spit in front of him, and proclaim, "Such should be done to a man who would not build up his brother's house!" (Devarim 25:5,7,9)

- 1) "Yibum," as mentioned above, is only applicable when a man dies childless. "Dying childless" includes cases where a man once had children, but those children were already dead at the time of his own death (BT *Yevamot 87b*).
- 2) If the deceased man has no living children but he does have living grandchildren, he is not considered to be "childless." Therefore, there is no "Yibum" (ibid. 70a).
- 3) The widow is only bound to marry her husband's **brother**. If the deceased husband does not leave behind a living brother, his wife is free to marry whoever she pleases (ibid. 17b).
- 4) If the deceased left behind any offspring at all, there is no "Yibum" — even if the offspring is only one day old. Not only that, but even if the offspring is still a fetus at the time of the husband's death, its mother is exempted from being bound to the living brother. This is only true, however, when the offspring is viable. If the fetus is aborted or stillborn, or even if it is born alive but dies or is killed before it has lived for thirty days, it is not considered to have ever been a viable offspring. "Yibum" is therefore required (ibid. 111b; *Shabbat 136a*).
- 5) If the brother of the deceased is a minor, the widow is still bound to him. In this case, however, she does not have the option of freeing herself through the "Halitzah" ceremony, since a minor is not able to perform a "Halitzah." Instead, she must wait 13 years, until the brother is thirteen years old, in order for him to be able to perform a "Halitzah." Only then may she remarry (*Yevamot 105b*).

B

THE WILY YEVAMAH

Let us now return to Shlomoh's judgment. The Midrash (Kohelet Rabbah 10:16) tells us that the reason both of these women were so desperate to have the living child declared theirs was that they were both potential "Yevamot". Neither of the two had any other offspring. Whoever would be judged to be the childless woman would not only lose the infant, but would also be trapped in the unpleasant status of "Yevamah," being dependent upon her brother-in-law's good will.

There is another Midrash (Yalkut Shimoni 2:175), that asserts that the husbands of the two women were father and son. That is, one woman was the mother-in-law of the other.

The above commentators suggest that these two Midrashim may be complementing each other. The two women — the mother-in-law and the daughter-in-law — had just been bereaved of their husbands, and needed a live child to exempt them from the status of "Yevamah." Both gave birth to babies. However, these two babies were still less than thirty days old at the time that one of them died, as the verse indicates. The mother of the dead child would therefore be subject to the laws of "Yibum" (rule #4). This, then, was the motivation of the lying mother to try to kidnap the other woman's child.

Now, if it was the mother-in-law's child who had died, she would have no reason to try to seize her daughter-in-law's child. Even though her son (husband of the daughter-in-law) had passed away **before** her husband had, and therefore **he** would not exempt her from "Yibum" (rule #1), nevertheless, she would be exempt from "Yibum" for another reason. The living child, if he was not her own child, was at least her **son's** child, and a grandchild is enough to exempt one from "Yibum" (rule #2)!

Only the daughter-in-law would have a motive to lie and to try and claim (falsely) that the child was hers. If it was her baby who had died within 30 days of its birth, leaving her childless, she would indeed be bound to her husband's brother as a "Yevamah" (rule #4). And who would that brother be? None other than the living baby, who was in fact her mother-in-law's child — i.e., her deceased husband's brother! Since her brother-in-law was a newborn infant, the daughter-in-law would have to wait thirteen years before this baby would be able to perform Halitzah on her and free her to marry others (rule #5)! (This baby was the only living brother of her husband. There could not have been any other, older brothers, because, as the Midrash points out, the mother-in-law was herself a potential "Yevamah." This means that she had no living children except for the baby in question.)

The youthful King Shlomoh, in his wisdom, realized all of this. He suspected that since the only one with a strong motive to lie was the daughter-in-law, the child must really belong to the mother-in-law. In order to confirm this conclusion he ordered that the child be cut in half. What would that accomplish?

If the remaining child were to be killed, this too would free the daughter-in-law from her "Yevamah" status — since the living baby was her only brother-in-law (rule #3). In fact, killing the child would be an even **better** solution from the daughter-in-law's perspective. By just kidnapping the child she might convince the court that she was not a "Yevamah." However, she herself would know that the child was not really hers, and that she really was not permitted to remarry, halachically speaking, until Halitzah was performed. By having the baby killed, though, she would truthfully be released from the bonds of "Yibum!" This is the reason the daughter-in-law suddenly lost interest in keeping the child when she saw that Shlomoh was ready to cut the child in half. This would serve her interests even better than taking the child for herself. "Cut!" she insisted.

Shlomo had guessed that this would be the woman's reaction to his suggestion. By tricking her into making such a seemingly ludicrous statement, he revealed her true motives. In this manner, Shlomo demonstrated beyond doubt that the daughter-in-law was indeed lying!

III ANALYSIS

While the questions raised above are answered in a deft manner by this explanation - and the brilliance of the application of the rules of Yibum to this case is evident and admirable - there are several difficulties inherent in the application of the laws of Yibum to explain Sh'lomoh's judgment.

First of all, there is no mention in the text of any relationship between the two women. Although in the essay quoted above, Rabbi Kornfeld represents the Yalkut Shim'oni as the source for this relationship, a closer look at the Me'iri (Yevamot 17b) bears out that it is the Me'iri's own theory - both Kohelet Rabbah and Yalkut Shim'oni only suggest (as one of three options - including one that they weren't real people at all!) that they were both Yevamot.

Secondly, and perhaps most critically, this story comes to demonstrate the fulfillment of G-d's promise to Sh'lomoh that he will have a wise and discerning heart. This is substantiated by the concluding verse - *And all Yisra'el heard of the judgment which the king had judged; and they feared the king; for they saw that the wisdom of G-d was in him, to do judgment.* (This is likely the motivation for the opinion in the Midrash that these two women were "spirits" - i.e. the case never happened and they were sent just to allow Sh'lomoh the opportunity to demonstrate his acumen and discernment to the people.) If the upshot of this story is that Sh'lomoh is an expert in the laws of Yibum, the main effect of the story - and the blessing - is significantly diminished. The clear sense of the text is that the new king has great insight into human nature and has the ability to "force the truth" from recalcitrant litigants - such that everyone is in fear of him (not just potential Yevamot!).

The impression given by the Me'iri is that he would say this in his comments in Yevamot - as a way of illuminating a complex area of Hilkhos Yibum - but would not suggest this in a commentary on Sefer Melakhim. The thrust of the text militates against such an interpretation.

IV WHAT IS STATED...AND WHAT IS OMITTED

I believe that a clear and cogent analysis of the text will point us in the desired direction, such that we may understand how Sh'lomoh was so sure that the faux-mere would react in such an odd manner, indicting herself in the process.

We'll begin with a point of methodology. There are narratives in the T'nakh which are verbose (e.g. most of the texts relating to the construction and dedication of the Mishkan); much repetition is found there, which is likely due to the celebratory nature of the text. In such cases, although the Midrash will often comment on the seeming superfluity of particular phrases, we fully expect such repetition and do not necessarily pay excessive heed to each phrase in the text.

There are, on the other hand, very succinct passages (such as most legalistic texts), where every phrase, every extra word and sometimes even an extra letter becomes cause for debate, analysis and, ultimately, exegesis.

Which type of passage is our Haftarah? Is it a "tight" passage, where every word is teaching some new information, or the opposite?

We have a ready answer, in v. 22 - *And this said, No; but the dead is your son, and the living is my son, and they spoke before the king.* These last words *and they spoke before the king*, is somewhat of a pregnant phrase (pun intended) - what did they say before the king? The two women continued their dispute in front of the king - but we are not told what they said. The text seems to be telling us that only the information that is pertinent to our understanding of the case has been shared - but other statements, irrelevant to us, have been omitted. In other words, every thing that the text has told us is relevant and significant - it is a "tight" text.

Now, we can look back at the information provided and carefully look for clues therein. We'll begin by pointing out seemingly superfluous or odd words and phrases.

A: *איוות*. When first approaching the king, we are told that these are two women, who are prostitutes (*איוות*). This last word is absolutely unnecessary for the case itself; so long as we have two women, each claiming to be the birth mother of the living child, the case can proceed. Why mention their "profession"?

B: The first woman begins her plea with the words *בי אדני* - "beg pardon" - why do we need to hear this?

C: In v. 18, the plaintiff repeats her claim that she and the defendant were alone in the house, just the two of them, and there was no stranger in the house. Why the emphasis on this circumstance? If she were trying to explain why there is no witness on her behalf, it would be sufficient to state that it was "only the two of us in the house". Why mention the absence of a stranger at all?

D: In vv. 19-20, the plaintiff describes actions taken by the defendant at a time when, by her own admission, she was asleep. How can she testify to any of this?

E: When the defendant interrupts her, she states *No; but the living child is my son, and the dead is your son*. But when the plaintiff responds to her, she reverses the order: *No; but the dead is your son, and the living is my son*. Note that the king adopts this inversion, when he reviews their claims: *One says, This is my son who lives, and your son is the dead; and the other says, No; but your son is the dead, and my son is the living*. What are we to make of this?

V

REASSESSING THE TEXT

As we meet these two women, we are told that they are זנות - prostitutes. What does this add to our understanding of the case?

Since the entire case hinges on both women's desire to maintain "motherhood" of the living baby, we have to ask a more fundamental question - what would a prostitute want with a child? One can not imagine a "livelihood" where having a child around would be a greater hindrance! We are misled - or misdirected - if we imagine these two women fighting tenaciously for the "right" to raise a child; indeed, it is surprising that the women are there at all!

We are given support to this perspective in the description of the circumstances of the birth - and death - of the first child. These two women are alone in the house - one need not over-burden his imagination to divine what sort of house this is! Her emphasis about being alone in the house - explaining the lack of witnesses - is augmented by the odd phrase "there was no stranger with us in the house". What she seems to be seeing is that this house, which is usually visited exclusively by strangers - is bereft of them. In other words, the births (and, we may conjecture, the antecedent pregnancies) drove away all of the "customers". This point, we will see, is crucial for understanding Sh'lomoh's judgment.

When the first woman - who, as of yet, is not identified as the birth mother or the faux-mere, begins her argument before the king, she prefaces her words with the appropriate בי אדני - something the other woman omits. The text includes this to help us identify the real mother - a quick peek at v. 26 shows the properly identified birth mother begins her plea for the child's life with the same introductory formula - בי אדני. Now, we can look back at the opening arguments, fully aware that the plaintiff is the birth mother and the defendant is the would-be usurper.

What are we to make of the plaintiff's testimony of things that took place while she was sleeping? Clearly, this should not be read as testimony - but as her argument.

The general perception is that the faux-mere inadvertently smothered her baby and, in a state of hysteria or desperation, switched babies. The plaintiff is claiming nothing of the sort - "*because she lay on it*". In other words, the defendant intentionally killed her own child - for reasons that are obvious, after our analysis above. The defendant wanted no children in this "house of ill repute", as the immediate result of their presence was "there was no stranger in the house." Hence, she killed her own child and switched the babies in order to kill the second child.

This can also be seen in the inverted pleas of the women. When arguing a case before a judge or jury, one always saves his most powerful argument for last; i.e. that which is closest to the heart of the matter is the final statement. Now that we've properly identified (בי אדני) the plaintiff as the birth mother, we understand that the defendant, who states "but the living child is my son, and the dead is your son" is focused on the dead son (her own). Her main concern is not the life of the one, rather the death of the other. On the other hand, the birth mother states: "but the dead is your son, and the living is my son". Her main interest and focus is on her own son, who she desperately wants to save. (See the Malbim ad loc. who also attends to the inverted formulae but takes a different approach in analyzing them).

We also understand why Sh'lomoh repeats the inverted formula - it is the final proof for him that of who is whom here.

We can now appreciate the brilliance of Sh'lomoh. He immediately recognized that if a זונה was coming to plead for her child's life, she was likely the real mother - and her description of the circumstances, along with her claim about what the other mother had done, made the picture all too clear. In order to properly execute judgment, however, Sh'lomoh would have to entice the faux-mere

to indict herself.

To accomplish this, he looked at the case from her perspective (no mean feat this; see our earlier Shiurim on Megillat Esther). She saw the child as nothing more than a “thing”, in this case, an obstacle. In order to get her to convict herself, as it were, he played along, treating the child as an object. If there were an object of value over which two people were fighting, with equal claims, a split of the property would be in order (even though, strictly speaking, the defendant was in possession and would have to relinquish nothing without solid proof). Thus, the defendant was “suckered” into thinking that she had an ally in Sh’lomoh.

Why did she prefer to have the king kill the child?

In order to answer this, we have to ask why she didn’t kill the child herself that same night. It would seem reasonable that two children dying under similar conditions in the same house on the same night would raise undue suspicion; she likely wanted to establish her claim of motherhood over the living baby and then, at some later time, find another way to “get rid” of him.

Sh’lomoh’s verdict was a perfect solution for her- she wouldn’t have to wait, wouldn’t have to act in a way to avoid suspicion and wouldn’t have any more blood on her hands.

When the birth mother heard Sh’lomoh’s ruling, she reasoned that even giving the child over to this murderer is preferable; for as long as there is breath there is hope. She might find some other way to save her child’s life. The murderer, on the other hand, had every reason to prefer Sh’lomoh’s solution, as it solved her problem in one fell swoop.

Sh’lomoh’s wisdom, as demonstrated here, is multi-faceted:

- 1) He understood, from the information given, the facts of the case;
- 2) He was able to “play along” with the guilty party, and then
- 3) He proposed a solution that would assuredly identify both the real mother and the faux-mother.

His bluff was a “sure thing”, for he understood that the faux-mere would think that the king was prepared to do her dirty work.

G-d’s promise was, indeed, fulfilled in manner which impressed all of Yisra’el.